Supreme Court U.S.
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No. 00-

IN THE
Supreme Court of the United States

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in violation of the uniform holdings of this Court from *The Steelworkers Trilogy* to *United Paperworkers International Union* v. *Misco*, 484 U.S. 29 (1987), to *Eastern Associated Coal Corp.* v. *United Mine Workers of America, District 17*, 121 S. Ct. 462 (2000), the Ninth Circuit improperly rejected a labor arbitrator's fact finding based on credibility determinations in an award pursuant to a collective bargaining agreement between the Major League Baseball Clubs and the Major League Baseball Players Association, and then compounded that error by arrogating to itself the role of arbitrator and deciding the merits of a claim that the parties had expressly committed to arbitration.

PARTIES TO THE PROCEEDING

The only parties in the proceeding are the petitioner and respondent listed in the caption. The only other party in the proceeding below was Thomas T. Roberts, but he has been dismissed as a defendant.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, the Major League Baseball Players Association, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The two opinions of the court of appeals at issue were entered on February 10, 2000, and December 7, 2000, respectively. App. 1a-4a, 8a-36a. The first is reported at 203 F.3d 580 (9th Cir. 2000), and the second is not reported. The two orders of the United States District Court for the Central District of California were entered on Nov. 24, 1997 and May 17, 2000, respectively, and are not reported. App. 5a-7a, 37a. The two arbitration awards were issued on May 1, 1997 and July 16, 1999, respectively, and are not reported. App. 40a-45a, 46a-51a.

JURISDICTION

The opinion and final judgment of the court of appeals were entered on December 5, 2000. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case arises under section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), which provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

1. *Background.* In 1986, 1987, and 1988, the Major League Baseball Players Association ("MLBPA") filed a set of "collusion" grievances against the Major League Baseball Clubs ("Clubs"). The grievances alleged that the Clubs had violated the industry's collective bargaining agreement by engaging in collusion in the market for free agent services after the 1985, 1986, and 1987 baseball seasons.[1] App. 9a. According to the grievance, rather than competing with each other, the Clubs had acted in concert to decrease free agent salaries and, by doing so, substantially depressed salaries for large numbers of Players over an extended time period.

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[1] A free agent is a Player who may offer his services on the market to all Clubs, rather than a Player whose right to contract is restricted to a particular Club.

On December 21, 1990, after extensive arbitral proceedings, including awards finding that the Clubs had three times violated the collective bargaining agreement and caused extensive damage to numerous Players, the MLBPA and the Clubs entered into a global Settlement Agreement to resolve the grievances on behalf of all affected Players. App. 9a. Pursuant to this Agreement, the Clubs, *inter alia,* established a fund of $280 million to be distributed (with interest accumulating as of January 1, 1991) to all Major League Players damaged by the Clubs' collusion in the market for free agent services. *Id.*

Under the Settlement Agreement, the MLBPA, as the representative of all Players damaged by collusion, was assigned the task of designing a Framework "to establish an appropriate process for evaluation and determination of individual claims" for money from the Fund. *Id.* at 10a (Settlement Agreement ¶ 17).[2] Pursuant to that Framework, the MLBPA recommends to an Arbitrator how the Settlement Fund should be distributed among the numerous Players claiming that they were damaged by the Clubs' collusion. Individual Players have a right to object to any proposed distribution of the Fund. An Arbitrator resolves individual Players' objections to a proposed distribution in the context of the damage suffered by all members of the group; independently reviews the proposed distribution; and issues a final award. *Id.* at 10a-11a. As provided for in the Settlement Agreement and the Framework, the Custodian of the Settlement Fund may make distributions from the Settlement Fund only pursuant to a Distribution Plan that has been approved by the Arbitration Panel. See *id.* at 11a. (Settlement Agreement ¶ 9(a)).

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[2] Pursuant to the Settlement Agreement, Players had an opportunity to file objections to the MLBPA's proposed Framework. Respondent Steve Garvey did not file an objection. On September 14, 1991, after hearing the objections of Players, an independent Arbitration Panel, with amendment, approved the proposed Framework. App. 10a.

Pursuant to Section II of the Framework, Major League Players who believed that they had a claim for damages resulting from the Clubs' collusion were entitled to file such claims by filling out a Claims Questionnaire by May 20, 1991. While the Settlement Fund was $280 million, "approximately 840 Players filed several thousand separate claims asserting more than $1.2 billion in lost salary damages and an additional $100 million in non-salary damages." See Weiner Decl. ¶ 7 (Docket No. 10).

The MLBPA then began the process of evaluating Players' claims for damages from the $280 million fund. As the MLBPA concluded the evaluation of claims arising from a particular season or seasons, it issued a recommended partial distribution plan for damages for all affected Players for that period. Each recommended plan was submitted to the Arbitrator. Affected Player claimants then filed with the Arbitrator objections to the MLBPA's recommendations. In response, the MLBPA was required to file statements explaining how it arrived at its recommendations. The Arbitrator then held hearings, and conducted his own "independent review" of the Distribution Plan to determine whether "the approved Framework and the criteria set forth therein have been properly applied in the proposed Distribution Plan." App. 10a-11a. Ultimately, the Arbitrator issued a final and binding award. *Id.* at 11a.

2. *Steve Garvey's Claim and the Arbitration Awards.* After the 1985 Major League baseball season, there were two years – 1986 and 1987 – remaining on respondent Steve Garvey's contract with the San Diego Padres. App. 14a. Garvey filed a claim for damages from the Settlement Fund based upon the theory that, after the 1985 baseball season, his contract was not extended past 1986 and 1987 to cover 1988 and 1989 due to the Clubs' collusion.

The MLBPA did not accept Garvey's lost contract extension claim in its recommended Partial Distribution Plan concerning Lost Salary Claims for the 1988 season. The

MLBPA explained that "Garvey did not present [it] with any evidence that the Padres actually offered to extend his contract," as was required to obtain damages for a lost contract extension under the Framework. App. 14a.

At the July 2, 1996 hearing before the Arbitrator on his objection, Garvey for the first time presented evidence that the Padres had offered him a contract extension in 1985. App. 14a. Garvey claimed that in 1985, he was offered an extension of his contract with the Padres to include the 1988 and 1989 seasons; that the Padres withdrew the offer as a result of collusion; and therefore that he was entitled to damages for the loss of the salary that he should have earned under the contract extension. *Id.* He so testified and presented a June 28, 1996 letter from Ballard Smith, a Padre official in 1985, so stating. At that hearing, Garvey's representative stated that the objection should be sustained:

> [n]ot because we feel that the Players Association did anything wrong in their evaluation of his claims questionnaire or in evaluation of the evidence it had before them, but because there will be additional evidence which would have changed that determination and evaluation and, we believe, would have justified the awarding of Mr. Garvey's lost extension claim damages for 1988. [See July 2, 1996 Transcript at 6.]

After an agreed pause, the MLBPA provided a supplemental submission to the Arbitrator, describing all of the evidence related to Garvey's claim, including evidence that supported it and evidence that was inconsistent with it. See App. 15a-16a (describing Weiner Decl., Exhibits B & C).

The MLBPA submitted Garvey's 1988 and 1991 responses to collusion questionnaires where Garvey described his 1985 negotiations with the Padres and stated that it "'would have been reasonable' for the Padres to pursue an extension" but never mentioned that he had received an extension offer; Ballard Smith's 1986 testimony indicating that the Padres

would not have signed Garvey at that time; a letter from Garvey's agent indicating that Garvey was handling the 1985 negotiations, but that he, the agent, was unaware of any extension offer made to Garvey in 1985; and notes of a 1996 interview with Smith in which Smith stated that he had offered Garvey an extension. *Id.*

In an award entered on May 1, 1997, the Arbitrator approved with modifications the partial distribution plan for Players who lost salary as a result of collusion during the 1988 baseball season. The plan addressed 464 claims seeking damages in excess of $200 million. May 1, 1997 Award at 2-3. In so doing, the Arbitrator sustained several Players' objections, but rejected others, including Garvey's. App. 16a.

In rejecting Garvey's objection and finding that Garvey had not lost a contract extension as a result of the Clubs' collusion, the Arbitrator first explained the standard for review of lost contract extension claims – to wit, that such claims are valid only where "a specific offer of an extension was made by a club prior to collusion only to thereafter be withdrawn when the collusion scheme was initiated." App. 48a.

Then the Arbitrator detailed both Garvey's testimony and Ballard Smith's letter about the alleged 1985 contract extension offer from the Padres. *Id.* at 48a-49a. The Arbitrator stated that he had "substantial doubt as to the credibility of the statements in the Smith letter":

> On November 6, 1986 and again on November 20, 1986, Smith testified under oath in the Collusion I proceeding as follows:
>
> "Q. If Steve Garvey came around today [November of 1986] as the same player you signed after the '82 season . . . Do I take it correctly you don't think it would make sense to offer him more than a three-year contract?
>
> A. Based on where we are today?
>
> Q. Yes.

A. We wouldn't sign him today.

Q. Even if he's the same player that came out in '82.

A. Certainly not.

Q. Why not?

A. Our Club is at a different point. We were looking for credibility in the community. He was a very unique individual, plus the fact we won't need Steve today. We're stuck with a couple of younger players we'd like to play at first base. [*Id.* at 50a.]

The Arbitrator next pointed out that Smith had also testified in November of 1986 that the Club owners had not been engaged in collusion in the market for free agents. He then concluded:

> *In light of the stark contradictions between the contents of the recently produced letter from Smith and his earlier sworn statement that the Padres were not interested in re-signing Garvey,* I must reject his more recent assertion that Garvey did not receive an extension to his contract covering the 1988 and 1989 seasons because the Padres were forced by the other owners to participate in the collusion scheme. [App. 51a (emphasis supplied).]

In sum, the Arbitrator rejected the Ballard Smith letter for two reasons. First, the letter contradicted past testimony from Ballard Smith on the specific topic. Second, the Arbitrator believed that Ballard Smith's evidence had been untrustworthy in the past, and he was generally unwilling to credit him.

Garvey filed a motion to vacate the award in federal district court. During the pendency of that action, the MLBPA issued a proposed Distribution Plan for Lost Salary Damages for the 1989 season. The Plan did not recommend damages for

Garvey for loss of 1989 salary. App. 40a. Garvey filed an objection to that Plan, too.

On July 16, 1999, the Arbitrator issued an award approving, with modifications, the Plan for the 1989 season. App. 40a-45a. Again the Arbitrator sustained several Players' objections, but rejected others including Garvey's:

> The credibility of the Garvey testimony and the written submissions of Smith are both subject to some question. For example, in the original statement of the Garvey claim, along with the accompanying collusion claims questionnaire, it is said that he spoke with Smith regarding a possible contract extension "toward the end of the 1986 season" . . . and that Smith demurred. No mention is made that an agreement to extend the existing contract was ever constructed. In his turn, Ballard Smith also has provided conflicting statements. On the one hand, he asserts that "During the 1985 season, it was my intent to sign Steve Garvey to a two year contract extension" and that before the end of the season he made such an offer to Garvey. In November of 1986, however, Smith testified under oath "We wouldn't sign him today". If Smith would opt for two younger players rather than Garvey on November 6, 1986, why would he contemporaneously agree to a contract extension covering 1988 and 1989?[3] [*Id.* at 43a-44a.]

Thus, the Arbitrator's award did not provide Garvey with damages for lost salary during the 1989 season.

---

[3] The Arbitrator also observed that Garvey's agent, Jeremy Kapstein, had stated that, although he was unaware of the details of Garvey's discussions with Ballard Smith, he did become aware that the "dialogue . . . was stalled" and that Garvey never reported that the discussions resulted in oral agreement on a contract extension. App. 44a.

3. *Judicial Proceedings.*

a. *The First District Court Proceedings.* On November 3, 1997, Garvey filed an Amended Motion to Vacate the May 1, 1997 arbitration award denying him damages for a lost contract extension covering the 1988 season. App. 17a. Garvey specifically requested:

> 3. That the Court remand the May 1, 1997 Arbitration Award to the Arbitration Panel for a de novo arbitration hearing. [Amended Motion to Vacate at 22 (Nov. 3, 1997).]

The district court denied the motion to vacate. See Dec. 8, 1997 Order (App. 37a) (incorporating Oral Order at Hearing at 19) ("[the arbitrator] heard the case, and he made his decision, and I think he was correct") (*id.* at 39a)).

While that appeal was pending, the Arbitrator issued his July 16, 1999 award that, *inter alia*, denied Garvey lost salary damages for the 1989 season. App. 40a. On October 22, 1999, Garvey filed a Petition to Vacate the July 16, 1999 arbitration award. That action was stayed pending decision of the initial Motion to Vacate.

b. *The First Ninth Circuit Decision.* In a majority opinion authored by Judge Reinhardt, the Ninth Circuit reversed the district court's decision and held that the Arbitrator's May 1, 1997 award should be vacated. The Court first recognized that "arbitrators have no obligation to give their reasons for an award at all." App. 22a (internal quotation marks and omission in original omitted.) But, the court stated, "[w]hen an arbitrator does give reasons for a decision . . . we must accept those reasons as the basis for the award." *Id.* The court of appeals found that the Arbitrator did not credit the Ballard Smith letter supporting Garvey's claim and that the Arbitrator's stated reason for refusing to do so "borders on the irrational." *Id.* at 26a.

> The only inference that can fairly be drawn from the arbitrator's current crediting of Smith's earlier perjurious testimony is that the arbitrator was attempting to "dispense his own brand of industrial justice." *For this reason,* we decline to enforce the award. [*Id.* at 27a (emphasis supplied).]

The court therefore concluded:

> Based on the foregoing, the district court's denial of Garvey's Amended Motion to Vacate Arbitration Award is reversed. REVERSED and REMANDED with directions to vacate the award. [App. at 29a.]

Judge Whyte dissented, stating his belief that, in vacating the arbitration award, "the majority had "overstepped our deferential review role." App. at 33a. After laying out the established standard of review, he explained:

> It seems to me that the majority here quarrels with the arbitrator's fact finding rather than finding the award does not draw its essence from the collective bargaining agreement. In any event, the majority assumes that the arbitrator based its decision on Ballard Smith's testimony. However, the arbitrator stated that "[t]he shadow cast over the credibility of the Smith testimony *coupled with the absence of any other corroboration of the claim submitted by Garvey* compels a finding that the Padres declined to extend his contract not because of the collusion effect of the clubs. . . ." In other words, it appears the arbitrator felt that Smith's prior inconsistent testimony negated the credibility of his current testimony and, therefore, the probative value of it was outweighed by the conclusion that could be drawn from the lack of any corroboration that a specific extension offer had been made. [*Id.* at 34a (emphasis in original).]

Finally, the dissent pointed out that "Garvey's responses to claims questionnaires" submitted in 1988 and 1991 "contain no mention of a specific offer" and "never state that a specific

extension offer was actually made" even though they "discuss circumstances surrounding failed contract extension negotiations." App. 34a. In addition, "Garvey never told his agent that he had received a specific offer from the Padres." *Id.* at 35a. In light of the award and the record evidence, the dissent concluded that that award should have been enforced.

c. *The District Court's Order on Remand.* At an April 17, 2000 status conference before the district court concerning the spreading of the mandate of the court of appeals, the parties agreed that the court of appeals' decision required the district court to enter an order granting Garvey's Amended Motion to Vacate and vacating the May 1, 1997 award with respect to Garvey. In addition, the parties agreed that the court should vacate the July 16, 1999 award insofar as it related to Garvey, because it was issued, at least in part, for the same reason stated in the May 1, 1997 award.

Garvey further asserted, however, that the court of appeals had decided that Ballard Smith had to be credited and had found as a fact that the San Diego Padres had offered Garvey a two-year contract extension in 1985. He therefore argued that the district court must enter judgment on the merits of Garvey's claims. The MLBPA opposed the entry of such an order on the ground that the district court should not and could not enter an order requiring the Custodian of the Settlement Fund to pay Garvey damages for a lost contract extension covering 1988 and 1989. Instead, the MLBPA stated that the awards should be vacated, allowing Garvey's claims to be processed and decided under the Settlement Agreement and Framework. In addition, the MLBPA indicated that it would no longer oppose Garvey's outstanding request that the Arbitrator, Thomas T. Roberts, recuse himself from the remanded proceedings on Garvey's claims for lost salary during the 1988 and 1989 seasons.

On May 18, 2000, the district court entered an order vacating the arbitration awards at issue and remanding the matter for further de novo arbitration proceedings under the

Settlement Agreement and Framework. App. 5a. In addition, the court stated that "[t]he MLBPA does not object to Garvey's request that the arbitrator, Thomas Roberts, recuse himself from further proceedings with respect to Garvey's claim that he received an actual offer of contract extension covering the 1988 and 1989 seasons that was withdrawn as a result of collusion." *Id.* at 7a.

d. *The Second Court of Appeals Decision.* On June 19, 2000, Garvey appealed. The court of appeals granted Garvey's motion to expedite and, on December 5, 2000, issued its decision, again reversing the decision of the district court. App. 1a-3a. The court of appeals stated that, in its initial opinion, it had gone beyond a decision that the Arbitrator's stated reason for refusing to credit the Ballard Smith letter was irrational and vacating the arbitration award. Instead, the Ninth Circuit explained that it had decided the merits of the matter that had been submitted to arbitration: "[W]e established in *Garvey* that the conclusion that Smith made Garvey an offer and subsequently withdrew it because of the collusion scheme was the only conclusion that the arbitrator could draw from the record in the proceedings." *Id.* at 2a. On that basis, the court ordered the district court to *order the Arbitrator to issue an award finding that Garvey had lost a contract extension as a result of collusion and granting his claim for a multi-million dollar damages award.*

REASONS FOR GRANTING THE PETITION

In this review-of-a-labor-arbitration decision, the Ninth Circuit staked a judicial claim to decide the arbitration on the merits – by making its own findings of fact in place of the labor arbitrator's findings resting on credibility determinations and then ordering the Arbitrator to sustain the contract claim the Arbitrator had rejected and to enter an award in the claimant's favor.

The Ninth Circuit's bid to substitute judicial decision-making for the parties' choice of arbitral decision-making is foreclosed by labor arbitration principles stated by this Court in *The Steelworkers Trilogy* and its progeny. Not surprisingly, and equally to the point, the decisions below are in conflict with the decisions of every other court of appeals to address the precise question presented here. Plainly stated, the Ninth Circuit's approach flies in the face of the federal policy mandating arbitral determination of issues committed by the bargaining parties to arbitration and its deviation from the approach of the other circuits undermines the national uniformity that is a central goal of federal labor arbitration law.

By appropriating the role of arbitrator to itself in this case, the Ninth Circuit subverted the bargaining parties' expressly stated intent that an arbitrator with substantial experience under – and a concomitant understanding of the nuances of – Major League Baseball's collective bargaining agreement decide and reconcile the collusion claims of all of the many Players who were injured by collusion and sought damages from a single, fixed collusion Settlement Fund established by the parties on the premise that such claims would be settled in arbitration. And, by so doing, the Ninth Circuit worked a profound – and profoundly detrimental – change in the judicial role in reviewing labor arbitration awards.

This Court has stated in the most emphatic terms that in reviewing challenges to a labor arbitration decision, a court may *not* overturn the decision "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority." *United Paperworkers Int'l Union* v. *Misco*, 484 U.S. 28, 38 (1987). Thus, the judicial role is limited to assuring against a single egregious form of arbitral error – a decision that the award does not "draw its essence from the collective bargaining agreement." *Id.* This Court has made it equally plain that on discerning such an error, the courts are *not* to take on the arbitral function by

rendering a judicial decision on the merits of the arbitration, but are to vacate the award and remand for further proceedings before the arbitrator. *Id.* at 40 n.10.

In contrast, on the Ninth Circuit approach here, a review proceeding becomes the occasion for judicial determination of the facts, for judicial application of the contract law to the facts, and for judicial awards to claimants. In each particular, that is antithetical to the genius of the labor arbitration system, to the bargaining parties' provision for arbitration, and to the national labor policy preference of private resolution of labor contract disputes.

On all these grounds, this Court's review is required to safeguard the labor arbitration system from the threat of improper judicial intervention posed by the Ninth Circuit's approach here and to restore uniformity to the federal labor arbitration law. The need for review is particularly strong since that threat is posed by the Ninth Circuit – the largest and busiest of the courts of appeals and a circuit with a heavy review-of-labor-arbitration case load. We would be derelict if we did not add that while all the foregoing considerations make the strongest case for a grant of certiorari, see *infra* at 14-19, there is one further consideration that points to a grant and to a summary disposition reversing and remanding: That consideration is that the Ninth Circuit's decisions here, when judged by the labor arbitration principles stated in this Court's cases, are plainly and unequivocally wrong, see *infra* at 19-20.

1. The Ninth Circuit decisions here are a compound of two cardinal errors. The court below first rejected the labor Arbitrator's findings of fact based on the Arbitrator's credibility determination and made its own judicial findings, and then built on and magnified that error by making a judicial determination of the arbitration's merits and ordering the Arbitrator to enter the court's determination as the Arbitrator's award, rather than remanding for further arbitral proceedings.

In light of this Court's teachings, it should have been inconceivable to the Ninth Circuit that it should substitute its analysis of the record evidence and its analysis of the credibility of critical evidence for a labor arbitrator's considered analysis of the same evidence. "[A]n arbitrator must find facts and a court may not reject those findings simply because it disagrees with them," and may not do so even if the court views the factfinding as "improvident, even silly." *Misco*, 484 U.S. at 38, 39. The Ninth Circuit did not simply transgress that basic limitation on its power here; that court ran roughshod over the limitation by, after indicating familiarity with the Arbitrator, refusing to accept his determination. See App. 26a ("given the arbitrator's professional experience, the decision can be explained only by his desire to dispense his own brand of industrial justice").

The critical issue in the arbitration here was whether the Padres actually offered Garvey a contract extension and then withdrew that specific offer as a result of the Clubs' collusion. And the critical evidence in that regard was the letter of Ballard Smith that stated that the Padres had done so. The Arbitrator, taking all the background facts into account (including the lack of contemporaneous documentation), refused to credit that letter. The Ninth Circuit not only rejected the Arbitrator's analysis of the evidence and his finding that there was not sufficient evidence that an offer had been made, but made its own analysis of the evidence and found that an offer had in fact been made.[4]

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[4] The Ninth Circuit's conclusion that the Arbitrator "dispense[d] his own brand of industrial justice" is an ineffectual rhetorical flourish. App. 27a. Judge Reinhardt's reference is plainly to this Court's statement in *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) that "an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice." That statement refers to arbitral failure to follow the contract in determining a claim and not to arbitral failure, or perceived arbitral failure, in analyzing the evidence and

All the circuits, other than the Ninth Circuit, recognize, in the words of the Third Circuit, that "an arbitrator's decision need be neither wise nor internally consistent" and that "findings of fact and inferences to be drawn therefrom are the exclusive province of the arbitrator." *Exxon Shipping Co.* v. *Exxon Seamen's Union*, 73 F.3d 1287, 1297 (3d Cir. 1996). See *Sullivan, Long & Hagerty, Inc.* v. *Local 559, Laborers' Int'l Union of N. Am.*, 980 F.2d 1424, 1429 (11th Cir. 1993) ("[a]lthough we might consider such evidence to be insufficient to establish discrimination by Sullivan, even 'improvident' or 'silly' factfinding is 'hardly a sufficient basis for disregarding what the agent appointed by the parties determined to be the historical facts'"); *Local No. 7 United Food and Commercial Workers Int'l Union* v. *King Soopers, Inc.*, 222 F.3d 1223, 1226 (10th Cir. 2000) ("'courts are not authorized to reconsider the merits of any award even though the parties may allege that the award rests on errors of fact'") (quoting *Misco*, 484 U.S. at 36); *Remmey* v. *PaineWebber, Inc.*, 32 F.3d 143, 146 (4th Cir. 1994) (courts are not free to reject an arbitral award simply because "they would have reached a different conclusion if presented with the same facts"); *Eberhard Foods, Inc.* v. *Handy*, 868 F.2d 890, 891 (6th Cir. 1989) (observing that in *Misco* this Court "again advised lower federal courts to be more deferential to the arbitration process").

In sum, the Ninth Circuit's decision here is in conflict with *Misco* and the decisions of all other courts of appeals and could not be more wrong.

2. Having made the legal error of reversing the Arbitrator's fact finding, the Ninth Circuit leveraged that error into a judicial authority to determine the merits of the underlying claim and to order the Arbitrator who had rejected the

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finding arbitral facts. Therefore, nothing in *Enterprise Wheel* authorizes the kind of judicial fact finding and evaluation of evidence that the Ninth Circuit indulged in here.

contract claims at issue to enter an award in favor of the claimant. In this second respect, the decisions below, in allowing a disappointed grievant to retry and win in the federal courts a case lost in arbitration, are contrary to this Court's labor arbitration teachings and in conflict with the decisions of other courts of appeals.

Here, the court of appeals – which neither presided over the hearing nor observed any testimony – arrogated to itself the role of arbitrator, assessed the credibility of the witnesses, weighed the evidence, held that no alternative grounds supporting the award could exist, and that, on the evidence, the claimant was entitled to a multi-million dollar damages award:

> [W]e established in *Garvey* that the conclusion that Smith made Garvey an offer and subsequently withdrew it because of the collusion scheme was the only conclusion that the arbitrator could draw from the record in the proceedings. . . .
>
> Accordingly, we reverse the district court order [remanding for further arbitration proceedings] and direct the district court to remand the cases to the Arbitration Panel with instructions to enter an award in favor or Garvey. . . . [App. 2a, 3a.]

Again, the Ninth Circuit did not merely transgress, but rather ran roughshod over the limitations on its authority stated by this Court. This Court has expressly held that:

> as a rule the court [that has vacated an award] must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since this step would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for in the collective-bargaining agreement. *Instead, the court should simply vacate the award, thus leaving open the possibility of further proceedings if*

> *they are permitted under the terms of the agreement.* [*Misco*, 484 U.S. at 41 n.10 (emphasis supplied).]

See also *United Steelworkers of Am.* v. *American Mfg. Co.*, 363 U.S. 564, 567-68 (1960) ("[t]he function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator"; "[t]he courts . . . have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim") (footnote omitted). Cf. *Eastern Associated Coal Corp.* v. *United Mine Workers of Am., Dist. 17*, 121 S. Ct. 462, 466-67 (2000) ("the 'proper' judicial approach to a labor arbitration award is to 'refus[e] . . . to review the merits'").

The circuit law outside the Ninth Circuit uniformly heeds this Court's admonitions. For example, in *John Morrell & Co.* v. *United Food & Commercial Workers International Union Local 304*, 992 F.2d 205, 206-07 (8th Cir. 1992), a court of appeals had held that a prior arbitration award had to be vacated, because the arbitrator had incorrectly addressed the legality of a strike in sustaining a grievance and because a judicial determination that the strike was unlawful had preclusive effect. The union then sought to return the matter to arbitration, on the ground that, even if the strike were unlawful, its grievances should nonetheless have been sustained. The company refused to arbitrate on the ground that the court of appeals' vacatur of the prior arbitration finally determined all issues in the case. The court of appeals held that its earlier vacatur of the award on one ground was no obstacle to the return of the matter to the arbitrator so that he could address alternative grounds supporting his award. The court explained that "courts should not foreclose further proceedings before an arbitrator even if the arbitrator's prior 'procedural aberrations rise to the level of affirmative misconduct' requiring a court to vacate an award." *Id.* at 207.

Similarly, in *Smith* v. *Union Carbide Corp.*, 350 F.2d 258 (6th Cir. 1965), the district court determined that the arbitrators had failed to comply with the required procedures in the contract governing the arbitration. The judge vacated the award and "proceeded to hear the case de novo," determining that a claimant was entitled to pension benefits. *Id.* at 260. The Sixth Circuit reversed. It held that "the district judge exceeded his authority when he undertook to decide plaintiff's claims on their merits." *Id.* at 261. It concluded that "the district judge should have remanded the case to the arbitrators for procedure in accordance with the terms of the contract." *Id.* See also *Brotherhood Ry. Carmen Div., Transp. Communications Int'l Union* v. *Atchison, Topeka & Santa Fe Ry.*, 956 F.2d 156, 160 (7th Cir. 1992) (remanding a matter to arbitration for a determination of what procedure should follow a judicial decision that an arbitration award is enforceable); *Foster* v. *Turley*, 808 F.2d 38, 43 (10th Cir. 1986) ("if the district court here determines on remand that the award must be vacated on the ground of fraud, the court may not then decide the merits of the controversy. The court may only consider whether, pursuant to section 10(e) of the [Arbitration] Act, a remand to the arbitrators for rehearing is appropriate").[5]

In adopting a new, expansive judicial role in reviewing labor arbitration decisions, the Ninth Circuit defied this Court, brought itself into conflict with other courts of appeals, and

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[5] *See also Harvey Aluminum, Inc.* v. *United Steelworkers of Am.*, 263 F. Supp. 488, 495 (C.D. Cal. 1967) (vacating arbitral award for wrongful exclusion of testimony of employer's witness and failure to give the employer proper warning of the evidentiary rules to be used in the hearing, and remanding the case to the arbitrator "for the taking of the testimony" of the witness "and such other evidence, if any, as the Arbitrator may deem appropriate in the circumstances, and the making of such Award as he deems proper after consideration of all the pertinent and material evidence").

disrupted the uniformity of federal arbitration law. Certiorari review is clearly warranted.

3. We believe that our showing thus far clearly demonstrates that the petition for review should be granted. At the risk of unduly prolonging the petition, however, we also believe that it is clear beyond peradventure that the Ninth Circuit has violated all fundamental precepts of labor arbitration law in the particular facts in this case. For this reason, we add a brief showing that summary reversal is warranted. See *Mireles* v. *Waco*, 502 U.S. 9, 15 (1991) (summary reversal is appropriate when "the law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error") (Scalia, J., dissenting) (internal quotation marks omitted) (quoting R. Stern, E. Gressman & S. Shapiro, *Supreme Court Practice* 281 (6th ed. 1986) (quoting *Scweiker* v. *Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting))).

"The reasons for insulating arbitral decisions from judicial review are grounded in the federal statutes regulating labor-management relations. These statutes reflect a decided preference for private settlement of labor disputes without the intervention of government." *Misco*, 484 U.S. at 37. Labor arbitration plays a central role in this private process, and the labor arbitrator is "the proctor of the bargain" entered into by the contracting parties. *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 53 (1974).

In furtherance of this national labor policy, this Court has, for more than four decades, held that "[t]he courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract" and that courts may not "ha[ve] the final say on the merits of the awards." *Misco*, 484 U.S. at 36 (citing *Enterprise Wheel & Car Corp.*, 363 U.S. at 596). The Ninth Circuit violated both of these principles in this case when it expanded the judicial role in labor arbitration to include decision on the merits of matters subject

to arbitral decision pursuant to a collectively bargained agreement.

In this instance, the collective bargaining parties agreed that the merits of Players' claims for damages from the Settlement Fund are to be decided by an arbitrator, not by a judge. See, *e.g.*, App. 10a-11a. Indeed, the parties specified that only arbitrators experienced in interpreting and applying baseball's collective bargaining agreement should decide the merits of all Players' claims for damages from the Settlement Fund. See Settlement Agreement ¶ 52 (providing that past Chairs of arbitration panels deciding grievances under baseball's collective bargaining agreement serve as the Arbitrator under the Framework if the current Arbitrator, another past Chair, is unable to serve). Further, because the parties established a fixed sum of money to pay the damages claims of hundreds of Players who alleged that they had been injured by the Clubs' violations of the collective bargaining agreement, the decision about how much money each Player receives thus must be made by an arbitrator with an understanding of the claims of all injured Players.

The intent of the parties simply cannot be fulfilled when federal judges, rather than an Arbitrator named under the Settlement Agreement, decide the merits of one Player's claim in a vacuum. Allowing a court to make the damages determination for Garvey undermines the rights of the hundreds of union members participating in the collectively-bargained Settlement and the process arising from it. Cf. *United Steelworkers of Am.* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960) ("[t]he ablest judge cannot be expected to bring the same experience and competence [possessed by the arbitrator] to bear upon the determination of a grievance, because he cannot be similarly informed [of the

'common law of the shop' and the 'specialized needs' of the parties]").[6]

There can be no doubt that the labor-arbitration-review principles elucidated by this Court in *The Steelworkers Trilogy* and its progeny apply with full force here. By substituting its analysis of the critical evidence, its factfinding, and its determination for those of the labor Arbitrator, the court of appeals has arrogated to itself a judicial authority that, under this Court's decisions and federal labor arbitration law, it does not possess. For these reasons, this Court may wish to consider granting the petition and summarily reversing the Ninth Circuit.

* * * *

This Court should grant the petition for certiorari to resolve the conflicts and restore uniformity and to enforce established federal labor arbitration law. Moreover, the Ninth Circuit's errors are so fundamental and egregious that this Court may

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[6] Even assuming (incorrectly) that the vacatur was lawful, had the court of appeals followed this Court's command and remanded the matter to arbitration, the Arbitrator would at that time have considered all evidence related to Garvey's claimed lost extension, both supportive evidence and inconsistent evidence. Specifically, the Arbitrator would have considered whether Ballard Smith's evidence should be credited or whether there was some different basis for refusing to credit his letter. The Arbitrator may have decided to conduct a further hearing or to request further documentation or he may not have done so. Ultimately, the Arbitrator would have decided whether or not to grant Garvey's claim. Indeed, in his Amended Motion to Vacate, Garvey did not request a judicial determination of his claim, but instead sought as relief that the Arbitrator's award be vacated with respect to his claim, and "[t]hat the Court remand the May 1, 1997 Arbitration Award to the Arbitration Panel for a *de novo* arbitration hearing." Amended Motion to Vacate at 22 (Nov. 3, 1997). That request reflects a correct understanding of the arbitration agreement between the parties and the established law governing judicial review of arbitration. The critical point is that the questions related to what future proceedings should take place and the merits of Garvey's claim are for the Arbitrator, not for a court.

wish to consider summary reversal of its decisions in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 26, 2001

APPENDIX A

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

No. 00-56080.

D.C. No. CV-97-05643-WJR.

STEVE GARVEY,
Petitioner-Appellant,

v.

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Respondent-Appellee,

and

THOMAS T. ROBERTS,
Arbitrator Respondent.

Submitted Dec. 5, 2000
Decided Dec. 7, 2000

Appeal from the United States District Court
for the Central District of California,
William J. Rea, District Judge, Presiding.

Before REINHARDT and HAWKINS, Circuit Judges, and WHYTE,[1] District Judge.

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[1] Honorable Ronald M. Whyte, United States District Judge for the Northern District of California, sitting by designation.

MEMORANDUM [2]

Garvey appeals from the district court's order remanding his cases to the Arbitration Panel for *de novo* arbitration hearings.[3]

In the previous appeal, we overturned the arbitration award denying Garvey's claim. *See Garvey v. Roberts*, 203 F.3d 580 (9th Cir.2000). In doing so, we held that "the [arbitrator's] decision can be explained only by his desire to dispense his own brand of industrial justice. No other plausible explanation exists." *Id.* at 590-91. Thus, we established in Garvey that the conclusion that Smith made Garvey an offer and subsequently withdrew it because of the collusion scheme was the only conclusion that the arbitrator could draw from the record in the proceedings. The district court was bound to follow our mandate and the law of the case established in our decision. *Firth v. United States*, 554 F.2d 990, 993 (9th Cir.1977) (citation omitted); *see also Leslie Salt Co. v. United States*, 55 F.3d 1388, 1392-93 (9th Cir.1995) (finding that "the law of the case [doctrine applies] even where the first panel's holding was 'cryptic and somewhat ambiguous.'") (quoting *Hanna Boys Ctr. v. Miller*, 853 F.2d 682, 687 (9th Cir.1988).

Remand to an arbitrator is inappropriate where such remand would be futile because we could not accord judicial

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[2] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

[3] The Federal Arbitration Act provides that a party may appeal "a final decision with respect to an arbitration. . . ." 9 U.S.C. § 16(a)(3). Because the district court's decision ordering further arbitration proceedings relates to the entire case before the court and is not part of an "embedded" proceeding, the order is an appealable final decision under § 16(a)(3). *See McCarthy v. Providential Corp.*, 122 F.3d 1242, 1244 (9th Cir.1997); *Prudential Ins. Co. v. Lai*, 42 F.3d 1299, 1302-03 (9th Cir.1994).

deference to any other conclusion by the arbitrator. *See American Postal Workers Union v. United States Postal Serv.*, 682 F.2d 1280, 1285 (9th Cir.1982); *Dogherra v. Safeway Stores, Inc.*, 679 F.2d 1293, 1297-98 (9th Cir.1982). Nor is there any basis for the conducting of a *de novo* proceeding. There was no error regarding the admission of, or a failure to admit, evidence. The only question on appeal to this court was the propriety of the result reached by the arbitrator on a full and fair record. We concluded that the ruling against Garvey was in error. That left only one possible result—the result our holding contemplated—an award in Garvey's favor.[4]

While the blame may be ours, in part, for failing to make our instructions clear, nevertheless the district court did not properly apply our mandate or the law of the case when it remanded the cases to the Arbitration Panel for *de novo* arbitration proceedings. Accordingly, we reverse the district court order and direct the district court to remand the cases to the Arbitration Panel with instructions to enter an award in favor of Garvey in the amounts claimed by him before the Panel.

REVERSED AND REMANDED to the district court, with directions to remand the cases to the Arbitration Panel with instructions that it enter an award in favor of Garvey.

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[4] *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29 (1987) is not to the contrary. In *Misco*, the company argued that the arbitrator erred in refusing to consider particular evidence in reaching his decision. The Court stated that if the arbitrator had committed a procedural aberration, the proper remedy would be to remand for a new arbitration, where presumably the arbitrator would consider the disputed evidence. *See id.* at 41 n. 10. Unlike in *Misco*, here there is no procedural error to be corrected at a new arbitration hearing. The record was complete; the arbitrator simply dispensed his own brand of industrial justice in reaching his conclusion.

WHYTE, District Judge, concurring.

WHYTE, District Judge:

I dissented from that portion of our opinion in *Garvey v. Roberts*, 203 F.3d 580 (9th Cir.2000) that vacated the arbitration award. Therefore, I did not agree at that time that judgment should be entered in Garvey's favor. I also believe that any remand should not have directed entry of judgment in favor of Garvey. However, I do agree that the majority of this court in Garvey found that the arbitration award against Garvey was in error and intended that an award in Garvey's favor be entered. Therefore, I concur that the cases now should be remanded, in accordance with the *Garvey* decision, to the district court with instructions to enter judgment in favor of Garvey.

APPENDIX B

[Filed May 17, 2000]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE No. CV 97-05643 WJR
CASE No. CV 99-11774 WJR
Honorable William J. Rea
Courtroom 10.

STEVE GARVEY,

Movant,

vs.

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Respondent.

ORDER RE: REQUEST FOR ENTRY OF JUDGMENT

These actions arise out of arbitration proceedings between former professional baseball player Steve Garvey and the Major League Baseball Players Association ("MLBPA"). The first action, CV 97-05643 WJR, arises out of an arbitration decision issued May 1, 1997, Partial Distribution Plan V, relating to Garvey's 1988 lost salary claim. The second action. CV 99-11774 WJR, arises out of an arbitration decision issued July 16, 1999, Partial Distribution Plan VI, relating to Garvey's 1989 lost salary claim.

In both actions, Garvey moved to vacate arbitration awards confirming the MLBPA's denial of Garvey's claims for damages from a settlement fund established pursuant to arbitration decisions finding that Major League Baseball Clubs had engaged in collusion in a free agent market. The Court denied the Motion to Vacate in the first action. The

Court stayed the second action pending appeal of the Court's decision.

On appeal, the Ninth Circuit found that by rejecting the testimony of Ballard Smith that he engaged in collusion in his capacity as the San Diego Padres' President and Chief Operating Officer, the arbitrator dispensed his own brand of industrial justice. Thus, the Ninth Circuit reversed the Court's denial of the Motion to Vacate and remanded with directions to vacate the arbitration award. Based on the Ninth Circuit's reasoning, both parties agree that the Court should now grant the Motions to Vacate in both actions. Garvey, however, further moves the Court to enter judgment in favor of Garvey.

Garvey argues that in reversing the Court's denial of the Motion to Vacate, the Ninth Circuit found that a contract existed between Garvey and the San Diego Padres. The Court believes that to accept Garvey's argument would be to go too far. The Ninth Circuit merely held that the arbitrator failed to give the proper weight to Smith's testimony in reaching his decision and ordered that the arbitration award be vacated. *See Garvey v. Roberts,* 203 F.3d 580, 591-92. The Ninth Circuit did not direct the Court to enter judgment in favor of Garvey.

Moreover, it is well-settled that courts play only a limited role when asked to review the decision of an arbitrator. *See United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.,* 484 U.S. 29, 36 (1987). Courts are not authorized to reconsider the merits of an award even though parties may allege that the award rests on errors of fact. *See id.*

Even after an award is vacated, the court must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since this step would improperly substitute a judicial determination for the arbitrator's decision. *See id.* at 41 n.10. Instead, the court should simply vacate the award or remand for further

proceedings *See id.* (citing 9 U.S.C. § 10(e); *Amalgamated Food & Allied Workers Union, Local 56 v. Great A & P Tea Co.*, 415 F.2d 185 (3d Cir.) 1969)).

Here, the Court finds that it is appropriate to remand these for further proceedings. The MLBPA does not object to Garvey's request that the arbitrator, Thomas Roberts, recuse himself from further proceedings with respect to Garvey's claim that he received an actual offer of contract extension covering the 1988 and 1989 seasons that was withdrawn as a result of collusion. Accordingly, the Court grants the Motions to Vacate and remands these cases to Arbitration Panel for *de novo* arbitration hearings.

IT IS SO ORDERED

Dated: May 17, 2000 /s/ William J. Rea
WILLIAM J. REA
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS,

NINTH CIRCUIT.

No. 98-55263

STEVE GARVEY,
Petitioner-Appellant,

v.

THOMAS T. ROBERTS, ARBITRATOR;
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Respondents-Appellees.

Argued and Submitted Sept. 14, 1999

Filed Feb. 10, 2000

Appeal from the United States District Court for the Central District of California; William J. Rea, District Judge, Presiding. D.C. No. CV-97-05643-WJR.

Before: REINHARDT and HAWKINS, Circuit Judges, and WHYTE,[1] District Judge.

Opinion by Judge REINHARDT; Concurrence by Judge MICHAEL DALY HAWKINS; Dissent by WHYTE.

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[1] Honorable Ronald M. Whyte, United States District Judge for the Northern District of California, sitting by designation.

REINHARDT, Circuit Judge: [2]

Former professional baseball player Steve Garvey ("Garvey") appeals the district court's denial of his Amended Motion to Vacate Arbitration Award. Garvey made his motion after an arbitrator confirmed the Major League Baseball Players Association's (the "Association") denial of Garvey's claim for damages from a settlement fund which was established after arbitration decisions finding that the Major League Baseball Clubs (the "Clubs") had engaged in collusion in the market for free agent services. Garvey contends that the district court committed reversible error by denying his motion to vacate for lack of subject matter jurisdiction with an alternative denial on the merits.

I. BACKGROUND

A. The Grievances, Settlement Agreement and Framework

In 1986, 1987 and 1988, the Association filed grievances against the Clubs, alleging that the Clubs had violated the Collective Bargaining Agreement ("CBA") between the Clubs and the Association by engaging in collusion in the market for free agent services after the 1985, 1986 and 1987 baseball seasons. On December 21, 1990, after arbitration decisions finding that the Clubs had engaged in collusion and caused extensive damage to numerous players, the Association and the Clubs entered into a Global Settlement Agreement ("Settlement Agreement") to resolve the grievances. Pursuant to the Settlement Agreement, the Clubs established a fund of $280 million to be distributed to damaged players.

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[2] Parts I and II.A were prepared by Judge Whyte, who is the author of the dissenting opinion. Judge Whyte graciously granted the majority permission to adopt these two sections, on which all members of the panel agree.

The Settlement Agreement provided that the Association would design a "Framework" "to establish an appropriate process for evaluation and determination of individual claims" for money from the fund. The Association issued a proposed Framework for resolution of claims to an independent arbitration panel for its consideration, and any player was permitted to file objections. On September 14, 1991, after hearings on players' objections to the Framework, the arbitration panel approved the Framework with amendments.

Players claiming damages from the collusion were required to file their claims by May 20, 1991.[3] The Association then began evaluating the claims pursuant to the Framework.

Under the Framework, as the Association concluded the evaluation of individual players' claims for a particular season or seasons, it was required to propose an overall distribution plan or a partial distribution plan for the claims relating to that season or seasons. Each recommended plan was then submitted to player claimants and the arbitrator. Player claimants or their agents could object to the Association's distribution plan recommendations, and the Association then responded by providing the arbitrator with a written statement of how it arrived at its proposed damage evaluation for that particular player. An objecting player claimant could then request oral argument before the arbitrator.

The Framework defines the responsibility and authority of the arbitrator with regard to review of a distribution plan as follows:

> . . . the arbitrator shall determine only whether the approved Framework and the criteria set forth therein

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[3] It is unclear to the court why the due date for submitting completed claims questionnaires preceded the issuance of the arbitration panel's opinion approving the Framework.

have been properly applied in the proposed Distribution Plan. The arbitrator may request such information from the Association or from any objectors which he deems necessary to make his determination.

If the arbitrator determines that the approved Framework and the criteria set forth therein have not been properly applied with respect to any portion of a proposed distribution Plan, he shall have the authority to modify or amend the Distribution Plan to the extent necessary, in his judgment, to cure that defect. *IN DOING SO, THE ARBITRATOR MAY RAISE OR LOWER THE DAMAGE ALLOCATION AND/OR MAJOR LEAGUE SERVICE AWARD TO ANY PLAYER OR PLAYERS . . . .*

The arbitrator shall promptly issue a written award regarding any proposed Distribution Plan after he has considered all objections and after he has conducted his own independent review, which award shall specify the specific damage allocation for each individual player claimant pursuant to the Distribution Plan. The content of the written award shall otherwise be subject to the sole discretion of the arbitrator. As mandated by the Settlement Agreement, all decisions of the arbitrator regarding any proposed Distribution Plan will be final and binding on all individual player claimants, the Association, the Major League Baseball Player Relations Committee and the Clubs.

(Emphasis in original).

B. The Standard Under the Framework for Assessing Lost Contract Extension Claims

At issue in this appeal is Garvey's claim for damages resulting from an alleged lost contract extension for the 1988 and 1989 baseball seasons which Garvey claims resulted from the Clubs' collusion. Garvey's claim, which was based on his

1987 salary, was approximately $3,000,000 for the two year period.

The Framework sets forth, at Section II, the standard for a player's recovery of damages for an alleged lost contract extension, as follows:

> Some players who were under contract for a particular season believe that, but for the Clubs' collusion, they would have signed contract extensions (or better extensions than they actually signed) covering future seasons. *Although any player may file such a claim, the evidence indicates that there will be few potentially valid claims in this group.* Such a claim may be potentially valid if:
>
> (a) the extension would have been signed after November 1, 1985; and
>
> (b) the extension would have begun with the 1987 season or future seasons.

(Emphasis in original).

The Framework then sets forth at Section V, "Evaluation of Individual Player Claims," the following factors to be considered by the arbitrator, where applicable, in evaluating *all* player claims for money damages:

(a) the player's status, e.g., elected free agent; released free agent; non-tendered free agent; salary arbitration eligible;

(b) the player's Major League Service;

(c) the player's performance;

(d) the player's history of compensation;

(e) the salaries (and collusion claims, if applicable) of comparable players;

(f) collusion-free patterns of multi-year contracting, if applicable;

(g) the player's experience as a "new look" free agent, if applicable;

(h) the Guidelines Regarding Allocation of the Settlement Amount described below in Paragraph (3);

(i) the General Principles described below in Paragraph (4); and

(j) any other factor which would normally apply in the determination of a player's salary and other benefits in a collusion-free market, including but not limited to, those factors set forth in Article VI of the Basic Agreement.

The arbitrator further addressed the standard regarding lost contract extension claims in his February 14, 1994 award regarding Plan Distribution II:

> It is clear that in the absence of collusion some of these players would have secured an extension to a multi-year contract signed prior to collusion but others would not have received such an opportunity with or without collusion. The task of identifying from the record those players who would fall in one or the other grouping is difficult. The demarcation must nevertheless be drawn and, in order to assign some continuity to the results, I agree with the approach of the Players Association in this regard, an approach which recognizes lost extension claims only in those cases where evidence exists that a specific offer of an extension was made by a club prior to collusion only to thereafter be withdrawn when the collusion scheme was initiated.

The arbitrator reiterated this standard in later denying Garvey's claim, further explaining that "in each of the few contract extension claims recognized it was 'shown that the club in question actually made a specific offer of a contract

extension only to later summarily withdraw that offer pursuant to the scenario of the collusion program.' "

C. The Garvey Arbitration

Garvey's contract with the San Diego Padres covered the years 1983-1987. Garvey claimed damages from the settlement fund based on his allegation that the Padres would have given him a two-year contract extension for the years 1988 and 1989, but did not because of collusion.

On February 8, 1996, the Association released its proposed distribution plan covering the 1988 Claims. The plan awarded nothing to Garvey on his claim. In the period of almost ten years between the time the first collusion grievance was filed and the issuance of the 1988 distribution plan, Garvey did not present the Association with any evidence that the Padres actually offered to extend his contract. Garvey objected, and a hearing was held before the arbitrator on July 2, 1996.[4]

At the arbitration hearing, Garvey testified that the Padres made a pre-collusion offer in September 1985 to extend his contract for the 1988 and 1989 seasons, and that the Padres subsequently withdrew that offer because they had begun colluding with other teams. Garvey presented at the July 2, 1996 hearing, for the first time, a June 28, 1996 letter from Ballard Smith, the President/CEO of the Padres in the period 1979-1987. Smith's letter states that before the end of the 1985 season Smith made an offer to Garvey to extend his contract through the 1989 season, but that the Padres would not thereafter negotiate with Garvey due to their policy of collusion. Smith's letter states that "[t]here is no question in my mind that the reason the Padres withdrew their offer to Steve Garvey to sign a contract extension with the Padres was due to the collusion among the Clubs."

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[4] Arbitrator Thomas T. Roberts has been dismissed as a defendant to this action.

At the Association's request, the arbitrator granted a 21-day recess, requesting that both parties initiate a diligent effort to identify and produce documentation that could assist him in determining "what actually took place" from 1984 on with regard to the potential of an extension. After the recess, the Association submitted to the arbitrator the following additional evidence:

(1) The responses Garvey and his representatives submitted to claims questionnaires in 1988 and 1991. Garvey's response did not assert an actual offer, but rather asserted that it "would have been reasonable" for the Padres to pursue an extension. The response also described negotiations toward the end of 1986 in which the Padres indicated that they were interested in retaining Garvey beyond the 1987 season but declined to talk about an extension until a later date.

(2) Portions of Smith's November 1986 testimony in the collusion hearings, later cited by the arbitrator in his award, in which Smith denied collusion and testified that the Padres would not "sign [Garvey] today."

(3) A letter from Garvey's agent, Jeremy Kapstein. The letter stated that "as [Garvey] told the arbitrator . . . he wanted to handle his own discussions with the Padres about an extension." Kapstein's letter made clear that Garvey then did so, and also stated that Smith had confirmed to the agent that Smith and Garvey were conducting contract discussions by themselves. According to the letter, Smith also told Kapstein he was hopeful that a direct negotiation would result in a contract extension. Kapstein's letter goes on to state that sometime later on, Garvey told him that the dialogue with Smith was "stalled" and asked for

Kapstein's help. When Kapstein then talked with Smith, Smith said that Club policy had changed and he was not interested in talking with Garvey about an extension.

(4) Notes of the Association's Sept. 13, 1996, telephone interview with Smith. In the interview, Smith again stated that he had offered Garvey a contract extension sometime after the All-Star break in 1985, and that the offer had been withdrawn as a result of the collusion between the clubs. In addition, Smith admitted that he had not told the truth about the collusion in the 1986 hearings. Finally, Smith described the reason why he came forward during Garvey's arbitration to provide new evidence: he said that although he has had no relationship of any kind with Garvey for the past seven or eight years and his only relationships during that period have been with friends in ownership, he felt compelled to offer the evidence pertaining to Garvey's claim to "right what I feel was a wrong I participated in against Steve."

In his May 1, 1997 award addressing fifty-eight players' claims, the arbitrator sustained several players' objections to the plan distribution, but denied Garvey's. The arbitrator's award dedicated over five pages to discussion of Garvey's claim and the Association's denial of it. The arbitrator's discussion noted Garvey's testimony regarding the circumstances of the alleged offer and withdrawal. The arbitrator cited the letter from Smith and quoted its assertion that the offer was withdrawn due to collusion. The arbitrator wrote that this statement, "taken on its face, appears to support the position of Garvey advanced in this proceeding." The arbitrator nonetheless concluded that "[t]here exists, however, substantial doubt as to the credibility of the statements in the Smith letter." The arbitrator quoted Smith's

testimony from the 1986 collusion proceedings in which Smith had stated that the Padres were not in fact interested in continuing Garvey's contract in 1986 and that there had been no collusion. The arbitrator determined that

> [i]n light of the stark contradictions between the contents of the recently produced letter from Smith and his earlier sworn testimony that the Padres were not interested in re-signing Garvey, I must reject his more recent assertion that Garvey did not receive an extension to his contract covering the 1988 and 1989 seasons because the Padres were forced by the other owners to participate in the collusion scheme.

The arbitrator found that, "[w]hile Garvey and Smith may well have discussed the possibility of a contract extension," the scenario presented "does not meet the test established by the award of February 14, 1994," namely, the requirement of a "specific offer of an extension" made prior to collusion "only to thereafter be withdrawn when the collusion scheme was initiated." The arbitrator concluded that

> [t]he shadow cast over the credibility of the Smith testimony coupled with the absence of any other corroboration of the claim submitted by Garvey compels a finding that the Padres declined to extend his contract not because of the constraints of the collusion effort of the clubs but rather as a baseball judgment founded upon his age and recent injury history. The claim of Garvey for 1988 lost salary damages must therefore be denied.

D. The District Court Proceeding

Garvey filed a Motion to Vacate Arbitration Award in district court in response to the arbitrator's denial of his claim, asserting jurisdiction under 28 U.S.C. § 1332(a)(1) and Section 10 of the Federal Arbitration Act. However, in his brief in opposition to the Association's motion to dismiss, Garvey added a further allegation of jurisdiction under Section 301 of the LMRA, which provides, at subsection (a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). The court allowed Garvey leave to amend to properly assert jurisdiction.

Garvey thereafter filed, on November 3, 1997, an Amended Motion to Vacate Arbitration Award, again asserting jurisdiction under Section 301 of the LMRA. Garvey's motion argued that the award should be vacated because the arbitrator's decision did not draw its essence from a collectively bargained agreement and exceeded the arbitrator's authority.

In a November 24, 1997 tentative ruling, the district court stated that it was inclined to dismiss Garvey's amended motion for lack of subject matter jurisdiction and, in the alternative, that it was inclined to deny the motion on the merits based on a proper application of the standard of review of the arbitrator's decision. The court ruled from the bench during the November 24, 1997 oral argument, stating that "it's not an easy case because of subject matter jurisdiction. But as I said in my tentative, the movant failed to meet the requirement of jurisdiction under 29 USC 185." The court continued that, "[a]ccordingly, the matter should be dismissed for want of subject matter jurisdiction. But then to go on further, the court doesn't feel comfortable in upsetting the arbitrator's decision. He heard the case, and he made his decision, and I think he was correct." The court's December 8, 1997 order denied Garvey's motion "for the reasons stated on the record on November 24, 1997." Garvey thereafter filed his notice of appeal.

II. ANALYSIS

A. Jurisdiction

The question of whether a district court has jurisdiction over a matter is reviewed *de novo*. *See Wilson v. A.H. Belo Corp.*, 87 F.3d 393, 396 (9th Cir.1996). Jurisdiction is proper under LMRA § 301(a) where (1) the suit is based on an alleged breach of contract between an employer and a labor organization and (2) the resolution of the lawsuit is focused upon and governed by the terms of the contract. *See Painting and Decorating Contractors Ass'n of Sacramento, Inc. v. Painters and Decorators Joint Committee of the East Bay Counties, Inc.*, 707 F.2d 1067, 1071 (9th Cir.1983). Section 301 is "not to be given a narrow reading." *Smith v. Evening News Ass'n*, 371 U.S. 195, 199, 83 S.Ct. 267, 270, 9 L.Ed.2d 246 (1962).

Individual employees can invoke Section 301 jurisdiction to assert their rights under an agreement between an employer and a labor organization. *See id.* at 200-201, 83 S.Ct. at 270. Moreover, a "contract" under Section 301 can extend to documents beyond the collective bargaining agreement itself, as separate documents are often used to define the rights and obligations contemplated in a single contract. *Alvares v. Erickson*, 514 F.2d 156, 161 (9th Cir.1975). The court in *Alvares* therefore found that the word "contract" as it appears in Section 301(a) encompassed the provisions of a welfare trust which had been established as a supplement to and referred to in a collective bargaining agreement. *See id.* Likewise, a suit regarding individual rights to pension benefits that are deemed to "arise" from a collective bargaining agreement falls under Section 301(a). *See Rehmar v. Smith*, 555 F.2d 1362, 1367 (9th Cir.1976). Similarly, in *O'Hara v. District No. 1-PCD*, 56 F.3d 1514 (D.C.Cir.1995), the D.C. Circuit held that union members' claims that the union breached the collective bargaining agreement by failing

to distribute moneys which the union received pursuant to an arbitration award fell under Section 301.

Garvey's motion to vacate the arbitration award alleges that the arbitrator violated the Framework when he denied Garvey's claim. Although, taken alone, the Framework is not an agreement between an employer and a labor organization, it is a set of rules and guidelines developed pursuant to a settlement agreement between an employer and a labor organization, designed as a means to distribute moneys paid as a result of the employer's established breach of a collective bargaining agreement. As in *Rehmar*, the right which Garvey seeks to vindicate, namely, his right to payment for alleged damages caused by collusion, "arises from" the CBA, for his right to be free from the effects of collusion is founded in the CBA. Garvey claims that his request for moneys from the settlement fund was wrongfully denied. His claim is premised on rights set forth in the CBA and the Settlement Agreement which followed it, and is thus properly brought under Section 301 of the LMRA.

B. The Arbitration Award

In reviewing the merits of Garvey's challenge to the arbitrator's award, we start with the proposition that judicial review of an arbitrator's decision in a labor dispute is extremely limited. Our deferential approach to judicial review found its first important expression in three 1960 Supreme Court cases that have come to be known as the "Steelworkers Trilogy." *See Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960). In those cases, the Court explained that a collective bargaining agreement is "more than a contract; it is a generalized code to govern a myriad of cases

which the draftsmen cannot wholly anticipate." *Warrior & Gulf Navigation Co.*, 363 U.S. at 578, 80 S.Ct. 1347. The Court went on to state that because the arbitrator is the one chosen to implement the collective bargaining agreement's system of self-government, "[i]t is the arbitrator's construction [of the agreement] which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." *Enterprise Wheel & Car Corp.*, 363 U.S. at 599, 80 S.Ct. 1358. *Accord Federated Dept. Stores v. United Food & Comm. Workers Union, Local 1442*, 901 F.2d 1494, 1496 (9th Cir.1990). More recently, the Court has reiterated the deference due to an arbitrator's award: "[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." *United Paperworkers Intl. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987).

In *Enterprise Wheel & Car Corp.*, the Supreme Court set forth one of the exceptions to the general rule of outright refusal to review the merits of arbitrators' awards. The general rule, the Court noted, is inapplicable when an arbitrator "dispense[s] his own brand of industrial justice." 363 U.S. at 597, 80 S.Ct. 1358. In those instances—instances in which, by definition, an arbitrator's award draws no legitimacy from the collective bargaining agreement—a court has no choice but to refuse enforcement of the award. Over the years, we have formulated this exception in various ways. *See, e.g., SFIC Properties, Inc. v. International Assn. of Machinists & Aerospace Workers, Dist. Lodge 94*, 103 F.3d 923, 925 (9th Cir.1996) (stating that the exception applies "when the award does not 'draw its essence from the collective bargaining agreement' "); *Sheet Metal Workers v. Arizona Mechanical & Stainless, Inc.*, 863 F.2d 647, 653 (9th

Cir.1988) (suggesting that the exception applies where the award does not "represent[ ] a plausible interpretation of the contract"). Although the formulations have been various, the underlying rule has remained unchanged. We overturn an arbitrator's award only when it is clear from the arbitral opinion or award that the arbitrator did not base his decision on an interpretation of the collective bargaining agreement or that he disregarded what the parties put before him and instead followed his own whims or biases.[5]

Even this narrow exception to the rule of deference comes with a caveat: we will not overturn an arbitrator's decision on the ground that his written explanation of an award fails to show how the award is based on an interpretation of the collective bargaining agreement. Because arbitrators generally operate in an ad hoc manner with informal procedures, "[w]e do not require labor arbitrators to make the sorts of explicit or exhaustive 'findings of fact' we demand of district courts; likewise, the reasons for arbitral rulings need not be spelled out in detail. Indeed, '[a]rbitrators have no obligation . . . to give their reasons for an award' at all." *Stead Motors*, 886 F.2d at 1206 (quoting *Enterprise Wheel & Car Corp.*, 363 U.S. at 598, 80 S.Ct. 1358). Thus, ambiguity in an opinion that accompanies an award, or a lack of any real opinion at all, is not sufficient to permit an inference that the arbitrator exceeded his authority. *See Enterprise Wheel & Car Corp.*, 363 U.S. at 598, 80 S.Ct. 1358; *Stead Motors*, 886 F.2d at 1208. When an arbitrator does give reasons for a decision, however, we must accept those reasons as the basis for the award. To do otherwise would undermine the system of deference that governs our method of review.

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[5] Our circuit has identified two other exceptions to the general deference to an arbitrator's award: when the arbitrator exceeds the scope of the issues submitted, and when the award runs counter to public policy. *See SFIC Properties, Inc.*, 103 F.3d at 925.

In the present case, accepting Arbitrator Roberts's reasons as the basis for the award leads us inexorably to the conclusion that in reaching his decision the arbitrator "dispensed his own brand of industrial justice."[6] The arbitrator denied Garvey's claim for the reason that Ballard Smith's "testimony" regarding Garvey's contract negotiations at the 1996 individual claim proceeding was "in stark contradiction" to the statements Smith made in his capacity as the San Diego Padres' President and Chief Executive Officer at the infamous 1986 collusion hearing. Based on this contradiction, the arbitrator credited the version of events described by Smith at the earlier collusion hearing and, accordingly, concluded that both Smith's and Garvey's

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[6] We disagree with the dissent's attempt to justify the award on the basis of Garvey's earlier claims questionnaires, in which he did not indicate that he had been offered a contract extension prior to the period of collusion. Our dissenting colleague apparently believes that the arbitrator could have validly relied on the contents of the claims questionnaires as a basis for concluding that no offer was in fact made. We cannot agree that the arbitrator's decision may be affirmed on that basis: the record contains no indication that the arbitrator relied on the questionnaires, and it would have been improper for him to have done so. First, the arbitrator's decision makes no mention of the questionnaires, and relies instead on the statements made by Ballard Smith at the 1986 collusion hearing. Second, the arbitrator could not properly have relied on the claims questionnaires, because the arbitrator himself had previously established a procedure governing the hearings under which the questionnaires could not be considered. In setting forth the rules to be applied to his evaluation of players' claims, the arbitrator held that he would "treat[ ] those claims of the objecting players advanced in writing and/or at oral argument as definitive of their position rather than potentially conflicting claims they may have advanced earlier in [the claim resolution] procedure." In response to a question from Garvey's counsel during Garvey's hearing, the arbitrator made it clear that under this previously established policy he would not consider "conflicting positions which might have been taken earlier, such as in the claims questionnaires." Garvey's counsel was entitled to rely on this representation, and indeed appears to have done so.

testimony at the later proceeding was false. To understand why this decision can only be explained as an attempt by the arbitrator to dispense his own brand of industrial justice, we must review the context in which he reached his extraordinary conclusion.

As explained above, the present individual claim proceeding arose out of an earlier finding by a panel chaired by the same arbitrator, Thomas Roberts, that the baseball club owners had colluded over a period of time to depress player salaries and deprive highly paid players such as Garvey of their economic rights. After the club owners were found liable, they settled the damages claim by setting aside two hundred eighty million dollars for the benefit of the players who were the victims of their collusive activities. The arbitrators reached their finding of collusion following hearings in which various owners, including Smith, testified under oath that no collusion of any kind had occurred. During those hearings, Smith was asked to explain what reason there could possibly be, absent collusion, for the Padres' decision not to re-sign Garvey. In response, Smith stated that the Padres were simply no longer interested in Garvey's services as a player because the "Club [was] at a different point" than it had been at when it signed him in 1982. Smith also testified that the Padres' contract decisions during the period of alleged collusion were the product of nothing "but [his] own individual club judgment about the best interests of the Padres." After considering Smith's testimony and similar testimony from other owners, the arbitrators, headed by Chairman Roberts, rejected the owners' contentions and held that they had indeed colluded to depress player salaries and deprive players of their rightful incomes.

Ten years after the finding of collusion, Garvey's individual claim proceeding was conducted. Smith was the

key witness on behalf of Garvey.[7] In spite of his determination in the earlier arbitration that the testimony of the owners (including Smith) had been false, and in spite of the fact that the owners' testimony had been deliberately designed to cover-up their invidious scheme, the arbitrator rejected Garvey's claim on the ground that Smith's 1986 testimony had, in effect, been truthful. In doing so, the arbitrator first grudgingly acknowledged that, "taken on its face, [Smith's 1996 letter] appears to support the position of Garvey advanced in this proceeding." In fact, the letter does far more than appear to support Garvey's position. It unequivocally endorses Garvey's testimony in every respect: the letter states explicitly that Smith made Garvey an offer before the end of the 1985 season—an offer that the letter states was subsequently withdrawn "due to the collusion among the clubs." After making his grudging half-way concession regarding the contents of Smith's 1996 letter, the arbitrator proceeded to quote extensively from the statements made by Smith during the 1986 collusion hearings. These statements had, of course, been made for the sole purpose of supporting the owners' attempt to deceive the arbitrators—an attempt that the arbitration panel had squarely rejected. Nevertheless, because of "stark contradictions between the contents of the recently produced letter from Smith and his earlier sworn testimony that the Padres were not interested in re-signing Garvey," the arbitrator proceeded to reject Smith's confession of collusion as false and to accept his earlier denials of collusion as true.

Under ordinary circumstances, we would accept a conclusion by the arbitrator that Smith told the truth in his 1986 testimony and lied in his 1996 letter even if that

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[7] The claim procedure was very informal. Smith's evidence was provided by letter and telephone call, the latter being reported in a communication from the Players' Association. Yet, Smith's evidence was afforded the same dignity as other evidence provided in person.

conclusion were clearly erroneous. *See Sheet Metal Workers v. Arizona Mechanical & Stainless, Inc.*, 863 F.2d 647, 653 (9th Cir.1988). We are presented, however, with the extraordinary circumstance in which the arbitrator's own rulings make clear that, more than being simply erroneous, his finding is completely inexplicable and borders on the irrational. In this circumstance, given the arbitrator's professional experience, the decision can be explained only by his desire to dispense his own brand of industrial justice. No other plausible explanation exists.

As the earlier discussion of the collusion proceedings explains, the panel of arbitrators headed by Arbitrator Roberts had previously ruled that the 1986 testimony by the owners, including Smith, was untruthful. The owners' testimony during those hearings had been designed for the sole purpose of convincing the arbitrators that no collusion had taken place, and the arbitrators had concluded that the owners' testimony was not true. In light of that conclusion, Arbitrator Roberts' determination in Garvey's individual claim proceeding that Smith's (false) 1986 collusion testimony somehow precluded the crediting of his (truthful) confession in 1996 is, to say the least, bizarre.

The owners' mendacity in their 1980's collusive efforts to depress the ballplayers' income was in many ways as damaging to baseball as the Black Sox scandal of 1919.[8] The

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[8] It is interesting to note that many historians believe that the Black Sox scandal was itself the product of the economic exploitation of baseball players by a baseball club owner. The 1919 White Sox (known after the scandal as the Black Sox) were the best team in baseball that year, but the team was also one of the worst paid. The then-nonunionized players' salaries were so low because the players had been forced to sign contracts containing a "reserve clause," which prevented them from changing teams without the permission of the owner. (In effect, these reserve clauses operated in a manner similar to the owners' collusive practices in the mid-eighties.) In addition to using these exploitative contracts to depress player salaries, the owner of the team, Charles

scope of the owners' deceit and fabrications in their 1980's effort to cheat their employees out of their rightful wages was wholly unprecedented, as was the financial injury suffered by the ballplayers. That the arbitrator would in these circumstances rely on Smith's statements made in the collusion hearing, and on the basis of those false statements reject Smith's later effort to remedy the injury he had caused, surpasses understanding. The only inference that can fairly be drawn from the arbitrator's current crediting of Smith's earlier perjurious testimony is that the arbitrator was attempting to "dispense his own brand of industrial justice." For this reason, we decline to enforce his award.

We emphasize that the dispositive determination in this case is without any question the arbitrator's rejection of Smith's "testimony" on the ground that it conflicted with his earlier testimony on behalf of the owners. At the later hearing, Smith's and Garvey's descriptions of the events that occurred were entirely consistent: both agreed that an extension offer had been made and subsequently withdrawn. While the arbitrator purported to rely on the lack of credibility of "the Smith testimony," "coupled with the absence of any other corroboration . . . submitted by Garvey," the lack of "other" corroboration simply bolstered, in the arbitrator's view, his previously made decision not to credit Smith's testimony. It therefore adds nothing to that decision. Moreover, the record fully explains why Smith's evidence was the only direct evidence corroborating Garvey's

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Comiskey, regularly cheated the players out of other benefits and bonuses. Many think it was this grossly unfair treatment that led the White Sox players, including Shoeless Joe Jackson, to throw the 1919 World Series for money. *See* Eliot Asinof, Eight Men Out (1962); *see also* Eight Men Out (Orion 1988). We might note, however, that the situation has changed dramatically in recent years: observers today would find little reason to complain that baseball's current salary structure is unfair to the players or that it results in inadequate salaries and signing bonuses for its top stars.

testimony. Garvey's agent submitted evidence that Garvey and Smith negotiated directly regarding the extension, without any third-party assistance. The arbitrator simply disregarded the record when he added his "absence of corroboration" assertion.

We should also stress that while the falsity of Smith's 1986 testimony is readily apparent from the outcome of the collusion hearing, the truthfulness of Smith's statements in Garvey's individual claim proceeding finds strong support in Smith's explanation of his reasons for coming forward when asked by the parties. In explaining the contradictions with his earlier testimony, Smith confessed that some parts of his 1986 testimony had been untrue, and that other parts had been "a little cute"—all in an effort to avoid acknowledging that he had made an offer to Garvey. He then went on to say that he felt compelled to offer evidence now "because he was trying to right what [he] fe[lt] was a wrong [he] participated in against [Garvey]." Finally, Smith noted that he had no relationship of any kind with Garvey for the past seven or eight years, and that his only baseball-related relationships during that period were with other baseball owners. No one has suggested that Smith had any motive to lie at the current hearing.

The unique character of the proceeding at issue in the present case may explain in part, if any explanation is possible, why Arbitrator Roberts dispensed his "own brand of industrial justice." In ordinary labor disputes, arbitrators have many institutional advantages that help ensure the legitimacy of labor arbitration awards. Garvey's proceeding, however, bears little resemblance to the proceedings customarily employed to resolve labor disputes. It lacked two important institutional safeguards present in the ordinary arbitral proceeding: the perspective provided by the adversarial process, and the guidance provided by an established law of the shop. By providing a reliable mechanism for finding facts

and examining the strengths and weaknesses of conflicting arguments, the adversarial process, informal though it may be in the arbitration context, helps ensure that arbitral conclusions are sound. The present arbitration was unusual in that no such process existed: neither the baseball owners nor the Players' Association had a vested interest in whether a particular player received a portion of the fixed settlement fund. Similarly, there was no collective bargaining agreement to construe and no well-established law of the shop to help fill in the interstices. Instead, there was only a one time "Framework" for the arbitrator to implement.

While we set aside the award in this case, we consider the circumstances unique. We doubt that our decision will have any precedential value in cases involving more traditional methods of resolving disputes in the workplace. Certainly, we are aware of few, if any, cases in which arbitrators have dispensed their own brand of industrial justice in the ordinary arbitral process, or indeed in any proceeding. That such occurred here is regrettable, but fortunately not beyond repair.

III. CONCLUSION

Based on the foregoing, the district court's denial of Garvey's Amended Motion to Vacate Arbitration Award is reversed.

REVERSED and REMANDED with directions to vacate the award.

CONCURRING OPINION

HAWKINS, Circuit Judge, concurring:

I am delighted to join Judge Whyte with respect to Sections I (Facts & Procedural Background) and II A. (Jurisdiction) of the opinion. I am equally pleased to concur with Judge Reinhardt in Section II B. (The Arbitration Award) of the opinion. I write separately only to emphasize why I think the arbitrator's ruling is not entitled to the deference ordinarily accorded such decisions.

Imagine that Major League Baseball has decided to adopt a rule allowing video replay review of contested decisions and that we have been asked to review the home plate umpire's decision to call a particular pitch a strike. In the process of doing so, we are told we must apply a rule of substantial deference to the call on the field, that our job is not to overrule close calls, but only those that are so clearly and plainly wrong they cannot be rationally explained.

In that context, which I would argue is not unlike the standard of review of arbitration awards, I would certainly not overrule the strike call of an umpire where the pitch was right down the middle of the plate. Nor would I even consider overruling a strike call where the pitch was on the edge, or even close to the plate. And even if the umpire adopted, during the course of a game, a definition of the strike zone that was inconsistent with my own understanding of what the rules of baseball define as a strike, as long as the umpire applied anything even remotely approaching a consistent application of that definition, I would defer to it.

But if the videotape replay showed the catcher diving outside the batter's box to catch the pitch, I would overturn the umpire's decision in a New York minute. I would do so because the call on the field bore no reasonable relation to reality and, more importantly, because the integrity of the

game—here, of course, not a game at all—would suffer if I did anything else.

And that appears to be precisely what happened here. The arbitration below arose out of an earlier finding by another arbitration panel—which this very arbitrator chaired—that the owners had in fact engaged in collusion. This finding was reached after various owners, including Ballard Smith, then President of the San Diego Padres Baseball Club, testified under oath that no collusion of any kind had occurred. Of specific importance to this matter, Smith also testified that he had not made Steve Garvey a contract extension offer.

After considering this evidence, the earlier arbitration panel found that indeed there was collusion among the owners—a conclusion that simply could not have been arrived at without disbelieving the testimony of club owners, including Ballard Smith, to the contrary. This defined the "strike zone" for the resolution of claims like those of Steve Garvey. And, by any fair application of that definition, evidence that admitted the existence of collusion and owned up to prior attempts to mislead the truth-seeking process was in the strike zone and evidence that did the opposite was outside it.

This is the call that this arbitrator had to make. Having concluded that collusion had indeed occurred, a fund of some $280 million having been created to satisfy collusion claims, it was this arbitrator's task to sort through claims by players and former players. Into that process returns Ballard Smith, now no longer affiliated with Major League Baseball or the San Diego Padres baseball club, who says, in effect, to the arbitrator: "You will undoubtedly recall my prior testimony, which you were obviously able to see through. I know this will come as no surprise to you when I now tell you that I lied. I lied about not having made Steve Garvey a contract extension offer, and I lied about the existence of collusion among the owners."

The collusion "strike zone" having been decided as it had, we might expect a fair-minded decision maker to have done one of two things. One would have been to simply accept that Smith had lied when it was in his, his baseball club's, and baseball team owners' best interest to do so. Those lies having now been exposed, we might have expected such an arbitrator to applaud Smith for his forthright admission of prevarication, accept the truth of what he was now saying and proceed to determine the value of Steve Garvey's claim. No reviewing panel of any kind, applying even the most rigorous standard of review, could have found fault with that approach.

The second thing the arbitrator might have done would have been to take a more cautious approach. Smith's later statement, after all, was not under oath, and it is one thing to say "I lied" in a letter or an interview and quite another to serve up a prosecutable case of perjury by admitting under oath that prior testimony was a knowing, deliberate, and premeditated falsehood. Recognizing this, the arbitrator could have directed that Smith testify under oath concerning his more recent statements. And, if such a cautious arbitrator had done that, even though one might disagree with the end result—the "strike call" if you will—a reviewing authority would be required, I would think, to accept an arbitrator's weighing of the two sworn statements.

Unfortunately, neither occurred here and no standard of review, no rule of deference is so slavish as to require us to accept the conclusion of an arbitrator who says, in effect, "You lied before when you said there was no collusion, and I refused to rely on those lies in finding that there was collusion; but now that you are telling me that you did lie, that there really was collusion, I refuse to believe you." That is a pitch so far outside the strike zone that it is unworthy of deference, however defined.

WHYTE, District Judge, dissenting in part:

I dissent from the majority's conclusion that the arbitration award must be vacated (Part II.B.). I can understand why the majority believes the award is wrong and should be vacated, but I believe it has over-stepped our deferential review role in doing so.

A district court's review of arbitration awards is "both limited and highly deferential." *Sheet Metal Workers' Local 359 v. Madison Industries, Inc.*, 84 F.3d 1186, 1190 (9th Cir.1996). Thus, "an award must be confirmed if the arbitrators even arguably construed or applied the contract and acted within the scope of their authority." *Barnes v. Logan*, 122 F.3d 820, 821 (9th Cir.1997), *cert. denied*, 523 U.S. 1059, 118 S.Ct. 1385, 140 L.Ed.2d 645 (1998). "The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements." *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 596, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960). A reviewing court is generally bound to defer to the decision of the arbitrator, even if that decision makes erroneous factual findings. *See Sheet Metal Workers v. Arizona Mechanical & Stainless, Inc.*, 863 F.2d 647, 653 (9th Cir.1988); *SFIC Prop., Inc. v. International Association of Machinists & Aerospace Workers, Dist. Lodge 94*, 103 F.3d 923, 924-25 (9th Cir.1996). The Third Circuit has summarized the extremely deferential standard of review as follows: "Our review of the arbitrator's factual findings is not whether those findings were supported by the weight of the evidence or even whether they are clearly erroneous. All that is required is some support in the record. When the court finds some support, the inquiry is over." *Tanoma Min. Co. v. Local Union No. 1269, UMWA*, 896 F.2d 745, 748 (3d Cir.1990).

Courts have recognized exceptions to the general rule of deference to the arbitrator's decision, such as where the

arbitrator "dispense[d] his own brand of industrial justice," as opposed to making an award that draws its essence from the collective bargaining agreement. *Enterprise Wheel and Car Corp.*, 363 U.S. at 597, 80 S.Ct. 1358. It seems to me that the majority here quarrels with the arbitrator's fact finding rather than finding the award does not draw its essence from the collective bargaining agreement.[1] In any event, the majority assumes that the arbitrator based his decision on Ballard Smith's 1986 testimony. However, the arbitrator stated that "[t]he shadow cast over the credibility of the Smith testimony *coupled with the absence of any other corroboration of the claim submitted by Garvey* compels a finding that the Padres declined to extend his contract not because of the constraints of the collusion effort of the clubs . . . ." (Emphasis added). In other words, it appears the arbitrator felt that Smith's prior inconsistent testimony negated the credibility of his current testimony and, therefore, the probative value of it was outweighed by the conclusion that could be drawn from the lack of any corroboration that a specific extension offer had been made.

Significantly, no evidence other than Smith's arbitration statement corroborated Garvey's testimony that he had received a specific extension offer. Garvey submitted no documentation whatsoever evidencing a specific offer. The Association submitted to the arbitrator, after the 21-day recess, Garvey's responses to claims questionnaires which contain no mention of a specific offer. The 1988 questionnaire response states that "it would have been reasonable for the Club to pursue a contract extension." The 1991 questionnaire response states that Garvey and the Padres engaged in "contract extension negotiations" beginning toward the end of the 1986 season, at which point Smith told

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[1] The award draws its essence from the Framework developed from the Settlement Agreement. The Settlement Agreement resolved the grievances arising from the owners' violations of the CBA.

Garvey that "he would talk to him later because there was interest in Steve remaining with the Padres beyond 1987," and describes further talks with Smith in September, 1987 when, "[a]gain, Steve was told they would talk later." Although the questionnaire responses discuss circumstances surrounding failed contract extension negotiations, they never state that a specific extension offer was actually made. Garvey never told his agent that he had received a specific offer from the Padres. Admittedly, Garvey, rather than his agent, was dealing with Smith at the time of the alleged offer. However, when the negotiations "stalled" and Garvey brought in his agent, Garvey apparently said nothing to his agent about having received a specific offer.

The majority says that "the arbitrator could not properly have relied on the claims questionnaires, because the arbitrator himself had previously established a procedure governing the hearings under which the questionnaires could not be considered." Op. at 589 n. 6. The arbitrator did state at Garvey's hearing that he would not consider "conflicting positions which might have been taken earlier, such as in the claims questionnaires." I believe the statement is reasonably read as confirming what the arbitrator had said in his February 14, 1994 award, specifically, that he would regard the "claims of the objecting players advanced in writing and/or oral argument as definitive of their position rather than potentially conflicting claims that may have been advanced earlier in this entire procedure." That is, a player's current *claim* would define his position and the player would not be prejudiced by a previous conflicting *claim*. I do not read the arbitrator's statement as suggesting that he would not consider the lack of evidence corroborating a current claim or earlier conflicting *factual evidence*. Nor does the arbitrator's earlier statement preclude the use of conflicting factual statements to make credibility determinations.

I acknowledge that the evidence presented by Garvey at the arbitration supporting his claim that a specific extension offer was made to him is persuasive. However, our review must be highly deferential, and we should not vacate an award because we believe the arbitrator's factual findings are erroneous. Therefore, I believe the district court properly denied the motion to vacate the award and that its judgment should be affirmed.

APPENDIX D

[Filed Dec. 8, 1997]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case No. CV 97-5643 WJR (ANx)
STEVE GARVEY

Movant,

vs.

THOMAS T. ROBERTS, ARBITRATOR;
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,

Respondents.

ORDER OF DISMISSAL

November 24, 1997
10:00 a.m.
Courtroom of the Honorable
William J. Rea

Having considered Movant Steve Garvey's Amended Motion to Vacate Arbitration Award and Respondent Major League Baseball Players Association's Opposition thereto, and all supporting memoranda and documents submitted by the parties, and having heard oral argument;

IT IS HEREBY ORDERED that, for the reasons stated on the record on November 24, 1997, Movant's Amended Motion to Vacate Arbitration Award is denied, and this matter is therefore dismissed, each party to bear its own costs.

/s/ William J. Rea
WILLIAM J. REA
Date: December 8, 1997 UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CV 97-5643-WJR

HONORABLE WILLIAM J. REA, Judge Presiding

STEVE GARVEY,

Plaintiff,

vs.

THOMAS T. ROBERTS,

Defendant.

Los Angeles, California
Monday, November 24, 1997

Motion to Vacate Arbitration

Monday, November 24, 1997; Los Angeles, California Before the Honorable William J. Rea, Judge Presiding

10:00 a.m.

The Clerk: Item 25, Civil 97-5643, Steve Garvey versus Thomas T. Roberts.

[pp. 19-20]

* * * *

THE COURT: Well, it's not an easy case because of subject matter jurisdiction. But as I said in my tentative, the movant failed to meet the requirement of jurisdiction under Section 29 USC 185.

Accordingly, the matter should be dismissed for want of subject matter jurisdiction. But then to go on further, the Court doesn't feel comfortable in upsetting the arbitrator's

decision. He heard the case, and he made his decision, and I think he was correct.

You prepare an order reflecting the Court's ruling.

MS SEITZ: Yes, I will, your honor.

THE COURT: I'm sorry. Mr. Garvey's always been a hero of mine.

MR. PAPIANO: That's the reason for the saying that "justice is blind," your honor.

Thank you very much your honor.

CERTIFICATE

I hereby certify that pursuant to Section 733, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings in the above matter.

/s/ Carmelita E. Lee
CARMELITA E. LEE
OFFICIAL SHORTHAND REPORTER

DATE 2-20-98

APPENDIX F

PARTIAL DISTRIBUTION PLAN VI

In the Matter of the Application
of the Framework to the
Evaluation of Individual Player Claims
as Required by the Settlement Agreement

Applicable to

Grievances No. 86-2, 87-3 and 88-1

AWARD OF THE ARBITRATOR DATED JULY 16, 1999

APPROVING, WITH MODIFICATIONS, THE
SEPTEMBER 5, 1997
PARTIAL DISTRIBUTION PLAN PROPOSED BY THE
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION
COVERING 1989 LOST SALARY CLAIMS

Thomas T. Roberts, Arbitrator
1 El Concho Lane
Rolling Hills, CA 90274

[pp. 62-67]

* * * *

STEVE GARVEY

In the proposed Distribution Plan here being subjected to scrutiny it is the recommendation of the Players Association that the claim of Steve Garvey for 1989 lost salary damages be rejected upon a finding that collusion was not the cause of his failure to secure an extension to his 1983-1987 contract with the San Diego Padres. In the Objection filed on his behalf, Garvey argues that in the second week of September of 1985 the then President and Chief Executive Officer of the Padres, Ballard F. Smith, offered to extend his existing multi-year contract to cover both 1988 and 1989 at a salary of "approximately" $1,475,000 per year. It is asserted that Garvey forthwith accepted the offer (which was never reduced to writing) but Smith asked that the announcement of the contract extension be delayed until early December in anticipation that the news would increase season ticket sales for 1986. The contention is further made that when December of 1985 arrived, Smith renounced any agreement with Garvey because the Padres were then participating in the collusion campaign of the owners. Thus, Garvey seeks 1989 lost salary damages of a minimum of $1,450.000 as well as bonuses he might have earned plus a $500,000 signing bonus and an option for 1990.

The illustrious career of Garvey, first with the Los Angeles Dodgers and then the San Diego Padres, has been outlined in the Award of May 1, 1997. It was additionally noted therein that on December 21, 1982 Garvey signed a five-year guaranteed contract with the Padres applicable to the 1983 through 1987 seasons. That agreement was, of course, pre-collusion. Garvey thereafter played through 1987 with San Diego under the terms of that guaranteed contract. He here asserts that a September 1985 agreement reached with Ballard

Smith for an extension of his contract was withdrawn in December of 1985 "due to the collusion among the Major League Baseball Clubs". In the Award of May 1, 1997, I rejected that same argument as advanced therein in support of his 1988 lost salary claim.

In the present undertaking relating to 1989 lost salary claims, I have honored the applicable provisions of the Settlement Agreement and the Framework by conducting an independent review to assure that the criteria set forth in the Framework have been properly applied to each and every proposed individual player allocation. In the pursuit of that responsibility as to Garvey I have reviewed his collusion file maintained in the offices of the Players Association, the earlier Objection filed on his behalf to the 1988 Lost Salary Plan, the record made at the July 2, 1996 hearing on that Objection, the Objection he has filed in the present Plan, the transcript of the most recent hearing conducted on March 9, 1998 and all of the exhibits attendant thereto. That effort compels a finding that the failure of the Padres to provide Garvey an extension to his 1983-1987 contract to cover 1989 was not the result of collusion but rather a consequence of a baseball judgment by Padres management not to offer a contract extension at that time but rather to reserve judgment on the matter in order to monitor his continuing performance.

On behalf of Garvey it is said that the present inquiry should be limited to what occurred in the fall of 1985 and not embrace events that may have taken place thereafter. In support of the testimony of Garvey himself that an agreement to provide a two-year contract extension was actually consummated in September of 1985, certain written submissions by Ballard Smith are cited not only to establish that such an agreement was reached but also that it was thereafter "repudiated" by the Padres in December of 1985. At the hearing of July 2, 1996, however, Garvey did not identify such a fixed arrangement. At that time he stated that

during his meeting with Smith in the first week of December of 1985, Smith postponed "our discussions and the signing of the agreement." Garvey testified that over the year that followed he asked if the discussions could resume but was put off not only throughout the balance of 1986 but, indeed, until September of 1987 when he was advised all the Padres would offer him was a tryout in spring training of the next year. With that, Garvey retired.

It has been stated elsewhere in these proceeding (see the Award dated May 1, 1997 at page 33) that those player-claimants who assert that in the absence of collusion they would have secured an extension to a multi-year contract are put to the burden of establishing "the club in question actually made a specific offer of a contract extension only to later summarily withdraw that offer pursuant to the scenario of the collusion program". Garvey has not met that burden. The discussions he had with Smith (initiated in September of 1985 prior to the beginning of the collusion scheme) do not establish either a specific contract offer or a subsequent withdrawal of that offer effected as an element of the collusion of the owners.

The credibility of the Garvey testimony and the written submissions of Smith are both subject to some question. For example, in the original statement of the Garvey claim, along with the accompanying collusion claims questionnaire, it is said that he spoke with Smith regarding a possible contract extension "toward the end of the 1986 season" (not 1985) and that Smith demurred. No mention is made that an agreement to extend the existing contract was ever constructed. In his turn, Ballard Smith also has provided conflicting statements. On the one hand, he asserts that "During the 1985 season, it was my intent to sign Steve Garvey to a two year contract extension" and that before the end of that season he made such an offer to Garvey. In November of 1986, however, Smith testified under oath "We wouldn't sign him today". If

Smith would opt for two younger players rather than Garvey on November 6, 1986, why would he contemporaneously agree to a contract extension covering 1988 and 1989?

Garvey offers in support of his case a letter dated April 24, 1994 from Smith addressed to Kurt Bevacqua who was a teammate of Garvey in San Diego. That document containing the contradictory statement, "Jack McKeon was in charge of player personnel matters" is not probative of the circumstance of Garvey nor does it make mention of a conspiracy. Also placed in evidence on behalf of Garvey is an August 10, 1996 letter from his former agent, Jeremy A. Kapstein. In that communication, Kapstein states Garvey gave him no details about his discussions with Smith and Kapstein asked for none. More significantly, Kapstein reports Smith told him that he was "working on a contract extension" with Garvey. According to Kapstein, "Some time later, Steve mentioned to me that his dialogue with [Smith] was stalled". Kapstein reports he is not aware of any of the details of the Garvey-Smith discussions. More significantly, he makes no mention of either of them reporting that their discussions resulted in oral agreement upon a contract extension.

An additional observation is suggested by the record made in the processing of the present Garvey Objection. Garvey repeatedly accuses the Players Association of "bad faith" and "international withholding and suppression of evidence". I find nothing in the record to support either allegation. The processing of the Garvey claim by the Players Association has been consistent with the investigation, study, analysis and research of all of the 970 individual 1988 and 1989 lost salary claims. The Players Association has cooperated with Garvey and his representatives in every way and has fully responded to every overture and request submitted on his behalf.

In summary, the record made at the March 9, 1998 hearing as augmented by supplemental filings on behalf of Garvey conclusively establishes that no agreement to extend his

existing contract to cover the 1988 and 1989 seasons was reached with Smith in the first week of December 1985. To the contrary, the Padres stalled Garvey and, after he went on the disabled list on May 24, 1987 for the balance of the season, determined not to re-sign him. Collusion played no role in that decision and Garvey is therefore not entitled to 1989 lost salary damages. I confirm the failure of the present Plan to award him such damages.

APPENDIX G

PARTIAL DISTRIBUTION PLAN V

In the Matter of the Application of the Framework to the Evaluation of Individual Player Claims as Required by the Settlement Agreement

Applicable to Grievances No. 86-2, 87-3 and 88-1

AWARD OF THE ARBITRATOR DATED MAY 1, 1997

APPROVING, WITH MODIFICATIONS, THE FEBRUARY 8, 1996 PARTIAL DISTRIBUTION PLAN PROPOSED BY THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION COVERING 1988 LOST SALARY CLAIMS

Thomas T. Roberts, Arbitrator
1 El Concho Lane
Rolling Hills, California 90274

[pp. 31-36]

* * * *

STEVE GARVEY

Steve Garvey, a right-handed first baseman, played for the Dodgers with distinction from 1969 though 1982. In eight of those years he was the National League All-Star first baseman. In 1974, he was named the National League Most Valuable Player. On the field, he was awarded Gold Glove recognition for four consecutive years commencing in 1974. Garvey established several major league records for a first baseman, including leading his league in games played preseason (nine) and highest lifetime fielding percentage (.996). Beyond all of that, for seven consecutive years he played in every Dodger game.

On November 10, 1982, Garvey elected free agency and on December 21, 1982, he signed a five-year guaranteed contract with the San Diego Padres commencing with 1983 and running through the 1987 season. On July 30, 1983, he suffered a torn ligament in his left thumb and as a consequence he was on the disabled list for the balance of that season. That injury interrupted a stretch of playing in 1,207 consecutive games. In the following year, however, Garvey led the Padres to their first National League pennant and their only World Series appearance. Garvey played that entire year without committing an error and batted .284 while driving in 86 runs. 1985 and 1986 saw him repeat with similar strong offensive and defensive performances.

In 1987, the final year of his multi-year contract with the Padres, Garvey injured his left arm and as a consequence on May 24 he was placed on the disabled list where he remained through the balance of the season. Thus, in 1987 he played but 27 games, came to bat only 76 times, had 9 runs batted in and posted a .211 batting average. On November 9, 1987, at

the age of 39 and with over 17+ years of major league service, he elected free agency. Over the winter that followed, Garvey was invited to spring training by both the Padres and Dodgers but upon the condition that he would be offered a contract only if he made the club. Garvey declined those overtures as unsatisfactory and retired from professional baseball.

The Plan here advanced by the Players Association concludes that the failure of Garvey to secure a major league contract following his injury-marred 1987 season was not a consequence of collusion and therefore assigns no lost salary damages for 1988. Garvey, on the other hand, asserts that prior to the conclusion of the 1985 season and the onset of collusion he was offered a two-year extension of his multi-year contract with the Padres, an extension covering the 1988 and 1989 seasons. It his contention that the Padres thereafter withdrew that commitment when they elected to participate in the collusion scheme augmented by the owners. Garvey contends the offer advanced by the Padres would have renewed his 1987 salary of $1,450,000 for both 1988 and 1989 plus providing performance and award bonuses totalling $2,766,666.

The Award dated February 14, 1994 notes that some player-claimants in these proceedings have argued that in the absence of collusion they would have secured an extension to a multi-year contract. I therein stated that when responding to such claims I have adopted "an approach which recognizes lost extension claims only in those cases where evidence exists that a specific offer of an extension was made by a club prior to collusion only to thereafter be withdrawn when the collusion scheme was initiated". I further noted that in each of the few contract extension claims recognized it was "shown that the club in question actually made a specific offer of a contract extension only to later summarily withdraw that offer pursuant to the scenario of the collusion

program". Garvey here seeks to fall within that exception asserting he underwent just such an experience.

Garvey claims that during spring training in 1985 he personally approached the Padres then President, Ballard F. Smith, with the concept of extending his contract for an additional three years beyond 1987. Garvey states Smith suggested they talk about the matter after the commencement of the season. He has also described subsequent meetings convened with Smith in May of that year and again following the All-Star game, meetings at which Smith indicated he was amenable to a two-year contract extension. Garvey contends he next met with Smith during the second week of September at which time Smith offered him a two-year contract extension paying $1,475,000 in each such year. Garvey has testified that is was concurrently agreed that an announcement of the contract extension would be withheld until early December as a device to boost season ticket sales for the following year. He asserts Smith thereafter delayed such an announcement throughout the entire 1986 season as did Chub Feeney during the 1987 season (Feeney had succeeded Smith as President of the Padres). Garvey states that finally, in September of 1987, Feeney told him the Padres would not extend his contract.

In support of his version of the treatment afforded him by the Padres, at oral hearing Garvey proffered a letter from Smith in which Smith asserts that in early 1985 he initiated preliminary discussions regarding a contract extension covering the years 1988 and 1989 with Garvey's then agent. In the letter, Smith states "Before the end of the 1985 season, I made an offer to Steve to extend his contract through the 1989 season. The compensation for 1988 and 1989 was to be at the same level as his compensation for the 1987 season". Smith wrote that he thereafter "put [Garvey] off" during 1986 and into the early part of 1987 because "baseball's policy had changed". Smith asserts "the reason the Padres withdrew

their offer to Steve Garvey to sign a contract extension with the Padres was due to the collusion among the Clubs". That statement, taken on its face, appears to support the position of Garvey advanced in this proceeding. There exists, however, substantial doubt as to the credibility of the statements in the Smith letter.

On November 6, 1986 and again on November 20, 1986, Smith testified under oath in the Collusion I proceeding as follows:

> "Q. If Steve Garvey came around today [November of 1986] as the same player you signed after the '82 season . . . Do I take it correctly you don't think it would make sense to offer him more than a three-year contract?
>
> A. Based on where we are today?
>
> Q. Yes.
>
> A. We wouldn't sign him today.
>
> Q. Even if he's the same player that came out in '82?
>
> A. Certainly not.
>
> Q. Why not?
>
> A. Our Club is at a different point. We were looking for credibility in the community. He was a very unique individual, and plus the fact we won't need Steve today. We're stuck with a couple of younger players we'd like to play at first base."

Additionally, Smith further testified in November of 1986 as follows:

> "Q. Was any agreement reached at these [Owner] meetings, expressed or implied, that major league clubs would not bid on free agents?
>
> A. No. Absolutely not.

Q. Was any agreement reached among the major league clubs at any time that the clubs would not pursue free agents in '85?

A. No. Absolutely not.

Q. Was your decision about your participation in the '85 free agent market the product of any agreement with any other club or combination of clubs?

A. Absolutely not.

Q. Were your actions in the free agent market in '85 the product of anything but your own individual club judgment about the best interests of the Padres?

A. No. Absolutely not.

In light of the stark contradictions between the contents of the recently produced letter from Smith and his earlier sworn testimony that the Padres were not interested in re-signing Garvey, I must reject his more recent assertion that Garvey did not receive an extension to his contract covering the 1988 and 1989 seasons because the Padres were forced by the other owners to participate in the collusion scheme. While Garvey and Smith may well have discussed the possibility of a contract extension, the Padres nevertheless persistently put Garvey off while presumably reserving judgment in order to monitor his continuing performance, an opportunity abruptly concluded on May 24, 1987 when he went on the disabled list never to play again. This scenario does not meet the test established in the Award of February 14, 1994. The shadow cast over the credibility of the Smith testimony coupled with the absence of any other corroboration of the claim submitted by Garvey compels a finding that the Padres declined to extend his contract not because of the constraints of the collusion effort of the clubs but rather as a baseball judgement founded upon his age and recent injury history. The claim of Garvey for 1988 lost salary damages must therefore be denied.

Supreme Court, U.S.
FILED
FEB 27 2001
CLERK

No. 00-1210

IN THE

Supreme Court of the United States

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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February 28, 2001

15 pp

QUESTION PRESENTED

Is the Ninth Circuit's unpublished opinion ordering the district court to follow its previous mandate and law of the case proper?

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IN THE

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MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Steve Garvey, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the opinion of the United States Court of Appeals for the Ninth Circuit in this case. That opinion is unreported.

JURISDICTION

The Major League Baseball Players Association ("MLBPA") purports to appeal two opinions of the Ninth Circuit Court of Appeals: (1) entered on February 10, 2000, over which this Court lacks jurisdiction for review because such a petition is untimely; and (2) entered December 7, 2000, over which this Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

The MLBPA's "Statement of the Case" is misleading in its inclusion of only favorable facts to its position, and also reaches conclusions unsupportable from an independent review of all the facts.

In its Statement of the Case, the MLBPA goes to great lengths to show how it was eminently reasonable and fair in its process of evaluating the players' claims and obtaining determinations from the arbitrator. This self-serving characterization could not be more inaccurate or misleading.

For example, the Settlement Agreement, discussed in the MLBPA's petition at page 3, contemplated that the final distribution plan would be issued no later than December 31, 1992. Now, more than eight years later, the final distribution plan has not yet been submitted.

Further, on pages 4 through 8 of its petition, the MLBPA purports to characterize and discredit Garvey's claims as ever-changing. This discussion does not disclose, however, that the MLBPA's standard criteria for these lost extension claims had not even been approved when the claims questionnaires were first due, nor does it disclose the fact that the standards changed as the process went along.

To clarify, the claims questionnaires were required to be filed by May 1991, yet the Framework was not approved until September 1991. The test, that a contract extension had to have been actually offered, was not even articulated until the arbitrator's award for the 1986-87 lost extension claims came out on February 14, 1994, following the revised recommendation of the MLBPA. Until then, the standard for lost extension claims, as articulated in the Framework, had been that the extension would have been signed after November 1, 1985, and would have begun with the 1987 season or future seasons.

At all times, Garvey attempted to provide information responsive to the focus of the MLBPA's inquiry, but the MLBPA kept changing the standard. As the MLBPA changed the standard, Garvey presented evidence of facts responsive to the new standard. That is why the evidence of the Padre's extension offer was not furnished until the hearing in 1996, which was the definitive position of his claim.

In addition, the MLBPA suggests that a "*de novo* arbitration hearing" was the one and only form of relief sought by Garvey in the district court. In fact, Garvey requested various forms of relief—including an order simply vacating the arbitration award—and "for such other and further relief as the Court deems just and proper."

The Ninth Circuit's February 10, 2000, decision and its background and analysis is a clear and concise statement of the case. It is hereby adopted by Garvey as his Statement of the Case.

REASONS WHY THE PETITION SHOULD BE DENIED

I. This Court has jurisdiction over the Ninth Circuit's December 2000 judgment, but lacks jurisdiction over the February 2000 decision because a petition was not timely filed.

The MLBPA's only assertion in its statement of jurisdiction is that "[t]he opinion and final judgment of the court of appeals were entered on December 5, 2000." This statement is misleading and inaccurate.

The Ninth Circuit issued two separate and distinct judgments as the result of two separate and distinct appeals from two separate and distinct orders of the district court as follows:

(1) February 10, 2000, published opinion after appeal by Steve Garvey from "the district court's denial of his Amended Motion to Vacate Arbitration Award."[1]

(2) December 7, 2000, unpublished opinion after appeal by Steve Garvey "from the district court's order remanding his cases to the Arbitration Panel for de novo arbitration hearings."[2]

Supreme Court Rule 13.1 provides that a petition for a writ of certiorari must be brought within 90 days of the judgment. This 90-day time limit runs from the date of entry of the judgment or order sought to be reviewed from the court below.[3] This Court has uniformly treated the statutory time limitations as mandatory and jurisdictional and the untimely petition in a civil case accordingly "must ... be denied for want of jurisdiction."[4]

Because the MLBPA filed its petition for writ of certiorari on January 26, 2001—almost one year after the Ninth Circuit's February 2000 published opinion—this Court lacks jurisdiction to review the February 2000 decision.

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[1]*Garvey v. Major League Baseball Players Association*, 203 F.3d 580, 589 (9th Cir. 2000).

[2]*Garvey v. Major League Baseball Players Association*, No. 00-56080, 2000 U.S. App. LEXIS 31918, at *2 (9th Cir. Dec. 7, 2000).

[3]SUP. CT. R. 13.3.

[4]*Department of Banking v. Pink*, 317 U.S. 264, 268 (1942).

II. The opinion which this Court has jurisdiction to review is an unpublished opinion which has no precedential authority.

The December 7, 2000, opinion of the Ninth Circuit over which this Court has jurisdiction is an unpublished opinion.[5] As a result, the opinion is not binding and has no precedential value.[6]

Because the Ninth Circuit prohibits citation or use of its unpublished memorandum dispositions, such as the one of which the MLBPA is now requesting review, unpublished decisions of this circuit have no precedential authority and are therefore not worthy of certiorari.

III. The MLBPA did not file a timely petition for review of the Ninth Circuit's February 2000 opinion and is therefore foreclosed from raising issues addressed and decided therein, including the Ninth Circuit's holding that there was no support for the arbitrator's determinations.

The MLBPA commingles the issues addressed and decided in the published February 2000 opinion of the Ninth Circuit with the issues addressed and decided in the unpublished December 2000 opinion, in an attempt to obtain review of both by way of one petition. However, because a petition for review of the published February 2000 decision

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[5] *Garvey v. Major League Baseball Players Association,* No. 00-56080, 2000 U.S. App. LEXIS 31918, at *1 (9th Cir. Dec. 7, 2000).

[6] Ninth Circuit Rule 36-3(a) specifically states:

> "Not Precedent: Unpublished dispositions and orders of this Court are not binding precedent, except when relevant under the doctrine of law of the case, res judicata, or collateral estoppel."

was not timely filed, the MLBPA is foreclosed from raising the issues addressed and decided therein.

Both opinions are clear on their face and specifically set out the following, separately decided issues:

(1) February 2000 decision: The Ninth Circuit articulated the general rule of deference to arbitral decisions, citing this Court's opinions in *United Paperworkers Intl. Union, AFL-CIO v. Misco, Inc.*,[7] and what has become known as the *Steelworkers Trilogy*,[8] then focused on the exception to the general rule articulated by this Court in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*[9] The court then determined that the exception applied in this case, held that there was no support whatever for the arbitrator's determinations, and overturned the arbitrator's denial of Garvey's award.[10]

(2) December 2000 decision: The Ninth Circuit vacated the district court's order that remanded the case for *de novo* arbitration proceedings and ordered the district court to instruct the arbitration panel to enter an award for Garvey in the amounts claimed by him.

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[7]484 U.S. 29, 38 (1987).

[8]*See Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

[9]363 U.S. 593 (1960).

[10]*Garvey v. Major League Baseball Players Association*, 203 F.3d 580 (9th Cir. 2000).

The MLBPA may not raise, and this Court does not have jurisdiction to review, issues decided in the February 2000 decision, including the Ninth Circuit's rejection of the arbitrator's fact finding and the court's determination that there was no support for the arbitrator's determinations—issues which constitute the entirety of the MLBPA's "Question Presented" and comprise the majority of the argument contained in the MLBPA's "Reasons for Granting the Petition."

If the MLBPA actually had objections to the February 2000 decision, it should have petitioned for a writ of certiorari within 90 days of the February 2000 judgment. Because it failed to do so, the MLBPA is now foreclosed from raising those issues here.

IV. The time for filing a petition from the February 2000 decision is not expanded by the December 2000 decision because the former was not disturbed or revised by the latter.

In *Federal Trade Commission v. Minneapolis-Honeywell Co.*,[11] this Court articulated the test used to determine when the period within which a petition for certiorari must be filed begins to run anew, where it held:

> "The test is a practical one. The question is whether the lower court, in its second order, has disturbed or revised legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality."[12]

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[11] 344 U.S. 206 (1952).

[12] *Id.* at 212.

In applying the test to the circumstances of the case before it, the Court stated:

> "[W]e cannot hold that the time for filing a petition for certiorari was enlarged simply because this paper may have prompted the court below to take some further action which had no effect on the merits of the decision that we are now asked to review in the petition for certiorari."[13]

In this case, the Ninth Circuit was not asked to—nor did it—amend its previous judgment, and its December 2000 judgment did not have any effect on the merits of its February 2000 decision. In fact, in its December 2000 decision, the Ninth Circuit reiterated and summarized its own findings and conclusions which were set out in its February 2000 opinion, then stated that the only possible result from its decision was "the result our holding contemplated—an award in Garvey's favor," and concluded that "the district court did not properly apply our mandate or the law of the case when it remanded the cases to the Arbitration Panel for de novo arbitration proceedings."[14]

Because the Ninth Circuit upheld—and did not revise or disturb—its previous judgment, the December 2000 decision does not enlarge the time for filing a petition for certiorari from the February 2000 judgment. Therefore, any objection to the issues addressed and decided in the February 2000 judgment are not timely and may not be considered by this Court.

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[13] *Id.* at 210-211.

[14] *Garvey v. Major League Baseball Players Association,* No. 00-56080, 2000 U.S. App. LEXIS 31918, at *3-5 (9th Cir. Dec. 7, 2000).

V. The Ninth Circuit's decision does not warrant certiorari because it is of little or no import beyond the present parties involved and is not in conflict with this Court's decisions.

The circumstances which generated the decision from which appeal is taken—specifically, an arbitrator's disregard of the full record before him and administration of his own brand of industrial justice—are so novel that the decision is of little or no import beyond the present parties involved. The Ninth Circuit noted the rarity of the events in this case where it held:

> "We consider the circumstances unique. We doubt that our decision will have any precedential value in cases involving more traditional methods of resolving disputes in the workplace. Certainly, we are aware of few, if any, cases in which arbitrators have dispensed their own brand of industrial justice in the ordinary arbitral process, or indeed in any proceeding."[15]

Further, in its unpublished opinion, the Ninth Circuit specifically stated that its decision is not contrary to this Court's holding in *United Paperworkers Int'l Union v. Misco, Inc.*[16] The court went on to distinguish the facts of *Misco* with the facts of this case, noting that *Misco* was remanded for new arbitration proceedings because the arbitrator had refused to consider certain evidence in reaching his decision, where in this case the arbitrator's decision was

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[15]*Garvey v. Major League Baseball Players Association*, 203 F.3d 580, 592 (9th Cir. 2000).

[16]484 U.S. 29 (1987).

based on a full and fair record.[17] In this case, the arbitrator did not fail to consider evidence, he "simply disregarded the record."[18]

Because the Ninth Circuit's decision to have the arbitration panel enter an award for Garvey does not present questions whose resolution will have any importance beyond the particular facts and parties involved in this case, and because the decision is in accord with decisions of this Court, review is unwarranted.

CONCLUSION

The decision sought to be reviewed over which this Court has jurisdiction is unpublished and therefore has no precedential authority. Further, the decision is of little or no importance beyond the present parties involved and is not in conflict with this Court's decisions. Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[17] *Garvey v. Major League Baseball Players Association,* No. 00-56080, 2000 U.S. App. LEXIS 31918, at *3, n.5 (9th Cir. Dec. 7, 2000).

[18] *Garvey v. Major League Baseball Players Association*, 203 F.3d 580, 591 (9th Cir. 2000).

(3)

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No. 00-1210

IN THE

Supreme Court of the United States

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI[1]

Respondent Steve Garvey's brief in opposition is so evasive as to be a tacit admission against interest. Respondent does not even attempt to rebut the main point of our certiorari petition – that the Ninth Circuit's decisions here greatly expand the judicial role in reviewing arbitration awards in conflict with the decisions of this Court and the other courts of appeals, and by so doing, work the most serious harm to the federal labor arbitration regime.

Instead, Respondent argues that this Court lacks jurisdiction over one of the two decisions below and that, in any event, the court of appeals' approach is limited to its review of *this* arbitration award and is thus of limited interest. Respondent is wrong on both counts.

1. The bulk of the opposition brief is devoted to the baseless argument that this Court does not have certiorari

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[1] It is worthy of note that Respondent like Petitioner accepts the statement of the case in the court of appeals' February 10, 2000 decision. Opposition ("Opp.") 3. Thus, there are no factual or procedural matters in dispute here that cloud the pure questions of law we present in our certiorari petition.

At the same time Respondent does seek to have it both ways by embellishing on that statement of the case where it suits his fancy. For example, Respondent suggests that he did not submit evidence demonstrating that he received an offer to extend his contract until the July 2, 1996 hearing before the Arbitrator, because he did not know such evidence was required. Opp. 2-3. Respondent does so even though (i) he then acknowledges that the Arbitrator articulated the required standard on February 14, 1994, two years before his hearing, *id.*; and (ii) he offers no explanation for the questionnaire responses he submitted to the MLBPA, in which he gave an account of his contract extension negotiations that did not include the actual offer to extend that he now contends was made in 1985, *see* Pet. 5-6.

jurisdiction to review the February 2000 court of appeals' decision in this case. Opp. 3-8.

The short answer is that the February 2000 decision does not stand alone, but rather is the first of *two related Ninth Circuit decisions in a single case*.[2] And, it is well established that this Court "has jurisdiction to consider all the substantial federal questions determined in the earlier stages of the litigation, and it is enough if certiorari is sought within 90 days following the second or last of the judgments rendered below." Stern et al., *Supreme Court Practice* § 6.4, at 289 (1993) (citing, *inter alia*, *Hughes Tool Co.* v. *Trans World Airlines*, 409 U.S. 363, 365 n.1 (1973); *Urie* v. *Thompson*, 337 U.S. 163, 171-73 (1949); *Reece* v. *Georgia*, 350 U.S. 85, 87 (1955)).[3]

Indeed, this Court manifestly has jurisdiction to review the December 2000 decision under the test articulated in *FTC* v.

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[2] In its February 2000 decision, the court of appeals vacated an arbitration award and remanded the matter to the district court; the district court, in turn, remanded the matter for *de novo* arbitration, but did not dismiss the case. Pet. App. 7a. Garvey then challenged the order remanding the case for *de novo* arbitration; and in December 2000, the court of appeals issued a second decision *reversing the district court's order* and instructing the district court to remand the case to the Arbitration Panel with instructions that it "*enter an award in favor of Garvey in the amounts claimed by him before the Panel.*" *Id.* at 3a (emphasis supplied).

[3] *See* Stern et al., *supra* at § 2.2, at 40 ("the Court on certiorari to review a final decree can reach back and correct errors in the interlocutory proceedings below, even though no attempt was made to secure review of the interlocutory decree or even though such an attempt was made without success") (citing numerous cases); *id.* at § 4.18, at 198 (explaining that denial of certiorari at an earlier stage of a proceeding is without prejudice to "[a] renewal of the questions presented when certiorari is later sought from the final judgment") (citing *inter alia*, *Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 672 n.19 (1979); *Reece*, 350 U.S. at 87; *Urie*, 337 U.S. at 172-73; *Hughes Tool Co.*, 409 U.S. at 365 n.1).

Minneapolis-Honeywell Regulator Co., 344 U.S. 206 (1952), the case relied upon by Respondent in his opposition brief at 7-8. There, in a portion of the decision not quoted by Garvey, the Court held that where a second or revised decision of a court of appeals "changes matters of substance, or resolves a genuine ambiguity, in a judgment previously rendered," the time to petition for certiorari review of matters contained in *both* decisions begins to run anew. 344 U.S. at 211 (footnotes omitted).[4]

If the December 2000 Court of Appeals' decision does not "change a matter of substance" in that court's February 2000 decision, at the very least, the latter "resolves a genuine ambiguity" in the former. The second Court of Appeals' decision (i) *reversed* a district court decision which, in apparent accord with the first Court of Appeals' decision vacating the arbitration award, had remanded this case for "*de novo* arbitration hearings," Pet. App. 7a; and (ii) instructed the district court to instead remand the case with orders to the Arbitration Panel "to enter an award in favor of Garvey in the amounts claimed by him before the Panel." *Id.* at 3a. The second decision thus transmuted the first decision vacating the award into a judicial decision on the merits by taking the added step of mandating an award in the grievant's favor. As the Court of Appeals said in its second decision, "the blame

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[4] *See also* Stern et al., *supra* § 6.4, at 287 ("the time in which to petition for certiorari begins to run anew from the revised judgment of the court below" where the new decision "'changes matters of substance, or resolves a genuine ambiguity, in a judgment previously rendered'"); *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 378-84 (1965) (because "the court's second opinion resolved a genuine ambiguity in the first, . . . the time within which certiorari had to be requested dates from the second judgment"); *Burlington N., Inc.* v. *United States*, 459 U.S. 131, 138 n.5 (1982) (holding that the Court "plainly" had jurisdiction "[b]ecause the June 1981 decision 'resolve[d] a genuine ambiguity in a judgment previously rendered'") (second alteration in original).

may be ours, in part, for failing to make our instructions clear." *Id.*[5]

2. To the extent that the Respondent's Opposition treats with the questions presented, it seeks to trivialize the decisions below, by arguing that the underlying arbitration is *sui generis* and that the Ninth Circuit's appropriation of the Arbitrator's role is not to be taken as precedent setting. Opp. 7-9. But the Ninth Circuit's usurpation is too plain to be missed – that court first found the facts for the Arbitrator (and rejected the Arbitrator's fact findings and credibility determinations) and then entered an award for the grievant (and overturned the Arbitrator's determination that the grievant was not entitled to damages). Certainly the thin veil of "limiting" statements Respondent invokes does nothing to hide the Ninth Circuit's judicial determination of the arbitration's merits and the ensuing judicial arbitration award.

Respondent first relies on the statement by the Ninth Circuit that the circumstances of this arbitration are "'unique.'" Opp. 9 (quoting App. 29a).[6] But, as the Statement of Interest of *Amicus Curiae* Office of the Commis-

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[5] Garvey's "separate" argument that "the MLBPA is foreclosed from raising the issues addressed and decided" in the February 2000 decision, *see* Opp. 5-7, is no different from his jurisdictional argument in any way that we have been able to discern, and it suffers from the same flaw as the jurisdictional argument.

[6] In particular, the Ninth Circuit asserted without citation that the arbitration lacked "the perspective provided by the adversarial process" and the "guidance provided by an established law of the shop." Pet. App. 28a. As to the first, the court below is flatly wrong. Under the process as described earlier in the panel opinion, the MLBPA proposes a distribution plan; players may object to the MLBPA's proposals; an objection hearing is held before the Arbitrator; and the Arbitrator independently determines whether the player's objection should be sustained. *Id.* at 9a-11a. *See also infra* at 5. As to the second, again the decision below itself reveals that damages from the collusion settlement fund are awarded based on an "established law of the shop," to wit, the standards usually applied in salary arbitration. *See id.* at 12a-13a.

sioner of Baseball plainly reveals, the underlying arbitration is simply one of the many disputes between the MLBPA and the Clubs that the parties "ha[ve] contractually agreed to commit to the arbitration process" and the decision below thus deprives the bargaining parties of "the benefit for which [they] have bargained." *Id.* at ii. Equally to the point, the arbitration affects not just the interests of Garvey, the MLBPA and the Clubs, but the interests of the hundreds of other claimants seeking damages awards from a *fixed* settlement fund. The "uniqueness" label is thus a misnomer. This was a straightforward labor arbitration – albeit one that affected hundreds of players – in the context of an established and long standing bargaining process.[7]

Second, Respondent asserts that the Ninth Circuit was correct in concluding that *United Paperworkers International Union* v. *Misco, Inc.*, 484 U.S. 29 (1987), rather than governing this case, is of no moment here. Opp. 9. In *Misco*, of course, this Court explained that after vacating an arbitration award, "the court must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since this step would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for in the collective-bargaining agreement." 484 U.S. at 40 n.10. Contrary to the Ninth Circuit, that explanation is not limited to cases of arbitral "procedural aberration" or "procedural error." Pet. App. 3a n.4. The *Misco* Court, in fact, stated that "*[e]ven*" in cases involving "procedural aberrations [that] rise to the level of affirmative misconduct," there may be *no* such

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[7] The court of appeals' soothing reassurances that this is an extraordinary case of extraordinary arbitral error calling for an extraordinary judicial response (Pet. App. 29a) are equally empty. On any objective evaluation, the Arbitrator's findings are solidly based on the record evidence; the only fact finding error here was that of the court of appeals. The truth of the matter is that the Ninth Circuit's activist approach in this case is not subject to any discernible limiting principles.

foreclosure. 484 U.S. at 40 n.10 (emphasis supplied). It follows that where the alleged arbitral error is in finding the facts or in making credibility decisions, "the court should simply vacate the award, thus leaving open the possibility of further proceedings if they are permitted under the terms of the agreement. . . . [or] remand for further proceedings when this step seems appropriate." *Id.* What the court cannot do under this Court's jurisprudence is issue its own judicial decision on the merits – *viz.*, what the Ninth Circuit did here.

Finally, relying on his argument that the Court lacks jurisdiction to review the February 2000 court of appeals' decision, Respondent contends that no published decision of the Ninth Circuit is before the Court. Opp. 5. But the failure of the jurisdictional argument destroys his premise. And, in any event, the Ninth Circuit's improper arrogation to itself of the role of Arbitrator is, as we have explained, fully displayed in both opinions addressing the single arbitration award at issue here. While it is in Garvey's interest to pretend that the Ninth Circuit followed established law and a regular order here, the opposite is true.

* * * *

In the decisions below, the Ninth Circuit substituted judicial decision-making for the parties' choice of arbitral decision-making in conflict with other courts of appeals and in contravention of the labor arbitration principles stated by this Court in *The Steelworkers Trilogy* and its progeny. This Court should grant the petition for certiorari to bring the Ninth Circuit's labor arbitration law into line with that of the other courts of appeals and with the basic principles of the federal arbitration system. The Court may also wish to consider summary reversal to correct the fundamental and substantial errors in this case.

CONCLUSION

For the reasons stated above and in the petition, the petition for a writ of certiorari should be granted.

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March 13, 2001

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No. 00-1210

IN THE
Supreme Court of the United States

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE NATIONAL ACADEMY OF ARBITRATORS IN SUPPORT OF THE PETITION

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IN THE

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No. 00-1210

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The National Academy of Arbitrators respectfully moves for leave to file the attached *amicus curiae* brief in support of petition for certiorari herein. Counsel for petitioner has given its consent that such a brief be filed. Counsel for respondent has refused. The letters granting and denying consent have been lodged with the clerk.

INTEREST OF *AMICUS CURIAE*

The National Academy of Arbitrators, founded in 1947, is a professional organization of neutrals. Advocates for employers of labor unions are not eligible for admission. As of May 2000 the Academy had 624 members in the United States and Canada. To be considered for membership, an

arbitrator must demonstrate acceptability by labor and management through substantial and current experience in arbitrating labor-management disputes (a bare minimum of 50 cases within 5 years with a variety of parties) or, as an exception, must enjoy general recognition as an important authority in labor management relations through scholarly publication or other activities in addition to demonstrating current but more limited experience in arbitration.

The principle purpose of the Academy, as set out in its Constitution, are "to establish and foster the highest standards of integrity, competence, honor, and character among those engaged in the arbitration of labor-management disputes on a professional basis; to secure the acceptance of and adherence to the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes . . . ; to promote the study and understanding of the arbitration of labor-management and employment disputes . . . ."

The Academy is the co-author and major adjudicator of an ethical code, the previously mentioned Code of Professional Responsibility, which has also been adopted by the American Arbitration Association and the Federal Mediation and Conciliation Service. In addition, the proceedings of the annual meetings of the Academy, published by the Bureau of National Affairs, constitute the most authoritative existing collection of studies on the labor arbitration process.

The Academy has only once before filed a motion for leave to file a brief *amicus curiae* in support of a petition for certiorari. In that case, *UBC Southern Council of Industrial Workers v. Bruce Hardwood Floors.* 522 U.S. 928 (1997), we urged that the Court grant certiorari because the decision below was not only contrary to the decision of this Court and some other circuits but was "a pernicious undermining of the system of industrial jurisprudence that has served the nation well in reducing industrial strife." It amounted, we urged, to a "standing invitation to both employers and unions to seek

judicial review of arbitration decisions to which they disagree." The Court granted our motion for leave to follow but denied certiorari.

This case is like *Bruce Hardwood Floors* in that it provides an opportunity for the Court to arrest a disease that has spread further since certiorari was denied in that case and which, if not attended to, will sap the vitality of a sound system of industrial relations. We believe that it is appropriate that an organization dedicated to the preservation of that system be given an opportunity to express its views in support of review.

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BRIEF *AMICUS CURIAE* OF THE NATIONAL ACADEMY OF ARBITRATORS IN SUPPORT OF THE PETITION

INTEREST AND CONCERN OF THE *AMICUS CURIAE*

The interest and concern of the National Academy of Arbitrators is set out in full in the motion for leave to file to which this brief is appended and will not be repeated here.[1]

[1] Rule 37.6 statement: Counsel of record is the author of this brief, as well as the accompanying motion for leave to file it. No person or entity other than the National Academy of Arbitrators has made any monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Certiorari should be granted to arrest the increasing tendency of Courts of Appeal, exemplified by this case, to circumvent the decisions of this Court regarding arbitration under collective bargaining agreements. It should also be granted so that the question of the applicability of the Federal Arbitration Act to labor arbitration may be fully briefed, argued and decided.

REASONS FOR GRANTING THE WRIT

The petition for certiorari, as well as the dissent from the first decision of the Ninth Circuit, demonstrate that the decision sought to be reviewed is plainly contrary to the decisions of this Court. It flies in particular in the face of *United Paperworkers International Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). The Ninth Circuit was wrong when it set aside the arbitration award denying Garvey's claim and was egregiously wrong when, in the second decision, it ordered that the arbitrator enter a decision for Garvey. We need not burden the Court by reiterating the demonstrations of error. Our purpose is different. We recognize that this Court does not sit just to correct errors. Certiorari should be granted if the case presents an issue of importance in the administration or development of the law. We believe that it does.

1. Although this case has some unique characteristics, it presents a common and recurrent issue. This case arises from the collective bargaining agreement between the baseball players' union and their employers. Because the contestants are an employee, Garvey, and his union, it does differ from the usual case in which vacatur of an arbitration decision is sought but the difference is immaterial. The law to be applied, as the Ninth Circuit recognized in its first decision, is the LMRA § 301law governing the grounds on which the labor-management arbitration may be set aside. And the distinction which the Ninth Circuit drew between this case and "ordinary labor disputes" in that there was no "adversarial process . . . [that] helps ensure that arbitrable conclusions are sound" [2] was simply false. There was a true adversarial process.[3] The Association had a real and vital

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[2] Pet. 29a.

[3] Indeed this was alleged in Garvey's amended complaint "Following the execution of the Settlement Agreement, however, MLBPA's role

interest in seeing to it that only those truly entitled to be compensated were rewarded. The settlement fund was fixed and the claims filed by players greatly exceeded it. Those which were in fact allowed after arbitration substantially exceeded the funds available. Thus the net effect of the award to Garvey that the court mandated will be a reduction in the amount received by other players whose claims were sustained.[4]

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shifted from its prior representation of players to a role adverse to the players when it was given the task of proposing a framework for submission and evaluation of individual player claims and of proposing a distribution plan for each class of claims. Player/claimants could object to the proposals submitted by MLBPA, to which objections the MLBPA could respond, and such objections would be resolved through arbitration." (Complaint ¶ 4, Excerpts of Record in the Court of Appeals [ER] 0002).

[4] The Arbitrator on July 11, 1999, before the Ninth Circuit's decision requiring an award to Garvey, had already determined that all the player awards for 1989 had to be cut by 16.5 percent:

> "I have considered a number of options in an effort to bring the greatest degree of equity and fairness to the 1989 lost salary claimants vis-à-vis the entire universe of collusion claimants. In that process I have rejected such suggestions as ordering a further review of individual claims in an effort to impose downward adjustments and thereby move closer in the totality to the Framework allocations. Further, I have rejected the possibility of adjusting the amount of damages available within service classes of claimants as violative of the Framework. The conclusion I have reached is that the device of an across-the-board percentage reduction of the total damages must be adopted. This approach is incorporated in the 1989 Plan as constructed by the Players Association but I find it necessary to advance the percentage of the reduction proposed therein. The review I have independently conducted of the Plan, as well as the upward adjustment of some proposed distribution sums resulting from the objection process, requires that the percentage reduction imposed be set at 16.5 percent." ER 005680, v. 5, p. 6.

This case must, therefore, be seen as in *pari materia* with the hundreds of cases in which an arbitrator's decision in a labor management dispute is sought to be vacated. As such it is another and egregious example of the cases in which the lower courts have set aside arbitration decisions with which they disagree. Many of the lower federal courts have adopted a simple formula when faced with a decision with which they disagree: First set out the correct rule that a court has no business vacating an arbitration award simply because it believes it to be wrong. Cite *Enterprise* [5] and *Misco*. Then, go ahead and find some reason why the particular award involved nevertheless has to be set aside because it is wrong. By so doing they avoid the possibility of review. They have set forth the correct rule of law even while deciding the case exactly contrary to that rule.

The disservice to arbitration as a system of industrial jurisprudence is not just that particular decisions are set aside despite the parties' agreement that the arbitrator's decision shall be final and binding. The disservice is far greater. It serves as a virtual invitation to anyone dissatisfied with a particular decision to contest its validity. And, in doing so, even when the contest is lost, it undermines the system of industrial jurisprudence that has, with the support of the Court, served the nation well in reducing industrial strife.

The invitation that this formula offers has increasingly been accepted. In the twenty-two year period from 1960, the date of *Enterprise Wheel and Car*, through 1981 there were 187 cases in all of the circuits in which the validity of a labor arbitration was contested, for an average of 8.5 per year. But in the later ten year period from 1982 through 1991 there were more than 240 such cases, for an average of 24 per year. Similarly, the number of reported district court decisions

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[5] *United Steelworkers v. Enterprise Wheel & Car Corp.* 363 U.S. 564 (1960).

involving a claim for vacatur of an arbitration decision increased from an average of 24 per year in the twenty-one year period following *Enterprise* to 50 per year in the 1982-91 period. Equally significant the percentage of cases in which a contested award was enforced in the courts of appeal dropped from 74.9% in the earlier period to 67% in the later one.[6]

One device used by the lower courts to set aside labor management arbitration decisions has been the "plain meaning rule," adopted by some circuits. If the arbitrators reading of the relevant collective bargaining agreement provision is different from the court's, the court will say that the meaning which it prefers was plain and therefore the arbitrator's award should be set aside. We canvassed the decisions adopting this approach in our brief in support of the petition in the *Bruce Hardware Floors* case[7] and will not repeat them here. We add that following the decision in this case the Ninth Circuit, citing this case, has joined the circuits that follow this practice. *Hawaii Teamsters v. United Parcel Services*, 229 F. 3d 847 (9th Cir. 2000). See also *United Food & Commercial Workers v. United Markets*, 784 F.2d 1413 (9th Cir. 1986) (Kennedy, J. dissenting).

A second line of attack, applicable to discharge cases, had been the proposition that a court should set aside an arbitration award ordering reinstatement if the offense which the employee committed was in violation of public policy. Here too there was an expansion in the number of cases. In the 28 year period from 1966 through 1988 there were 54 cases in which public policy was raised as a bar to the

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[6] Leroy and Feuille, *The Steelworkers Trilogy and Grievance Arbitration Appeals: How the Federal Courts Respond*, 13 Indus. Rel. L.J. 78 (1991).

[7] *UBC Southern Council of Industrial Workers v. Bruce Hardwood Floors*, 522 U.S. 928 (1997) No. 97-95, pp. 2-6.

enforcement of an arbitration decision for an average of 1.9 per year. In the 11 year period from 1988 to 1991 there were 84 such cases for an average of 7 cases per year.[8] Fortunately this Court's decision in *Eastern Associated Coal Corp. v. United Mine Workers,* No. 99-1038, decided this Term, will provide a damper on this proliferation.

This case presents yet a third method of attack on an arbitration decision: The arbitrator's finding of fact. The arbitrator here was faced with contradictory testimony and he resolved it against the claimant Garvey. The Court of Appeals, in a fashion familiar to those experienced with the phenomenon, began by duly reciting the Section 301 cases in this Court limiting the scope of review of an arbitrator's decision under a collective bargaining agreement. But, like the courts invoking the plain meaning rule, it went on to conclude that the reasons given by the arbitrator to resolve this conflict were so implausible that in reaching his decision the arbitrator "dispensed his own brand of industrial justice," and vacated the award.

The court then went on to demonstrate beyond peradventure of a doubt that, rather than conforming to the principles of law it first announced, it was substituting its judgment for that of the arbitrator. In his complaint Garvey requested that the award denying his claim be set aside and that a de novo arbitration hearing be held.[9] On remand after the Ninth Circuit set aside the award the district court ordered just that. But counsel for Garvey having been handed the finger he had first asked for demanded the whole hand: that

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[8] *See* Joan Flynn, *Judicial Review of Arbitration Awards on Public Policy Grounds: Lessons from the Case Law*, 16 Ohio State Journal on Dispute Resolution 91, 96 (2000).

[9] "WHEREFORE, Garvey prays . . . that the Court remand the May 1, 1997 Arbitration Award to the Arbitration Panel for a de novo arbitration hearing . . . ." Complaint, p. 22, ER 0022.

judgment be entered for Garvey on his claim. When the district court refused Garvey appealed and the Ninth Circuit complied, directing the district court to direct the arbitrator to enter an award for Garvey.

The Ninth Circuit thus demonstrated by its own action that the reason assigned for setting aside Robert's decision was false. In its first decision it set aside his award because he must have been "dispensing his own brand of industrial justice." If so, a further arbitration before another arbitrator would avoid that error. Indeed, in concurring in the first decision Judge Hawkins set out what he believed an arbitrator not dispensing his own brand of justice could have done.[10] But when the district court directed that a new arbitrator proceed to decide the case de novo, thus enabling action in accordance with Judge Hawkins's suggestion, the Court of Appeals reversed it. In concurring with this second decision, Judge Whyte, who had dissented from the first decision, acknowledged that in its first decision the court had indeed not merely intended to set aside arbitrator Roberts's award as "dispensing his own brand of industrial justice" but had intended to decide the merits. He therefore concurred in the second decision. Pet. 4a.

We concur in the petitioner's assertion that it is so clear that the Ninth Circuit has violated all fundamental precepts of

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[10] "The second thing the arbitrator might have done would have been to take a more cautious approach. Smith's later statement, after all, was not under oath, and it is one thing to say 'I lied' in a letter or an interview and quite another to serve up a prosecutable case of perjury by admitting under oath that prior testimony was a knowing, deliberate, and premeditated falsehood. Recognizing this, the arbitrator could have directed that Smith testify under oath concerning his more recent statements. And, if such a cautious arbitrator had done that, even though one might disagree with the end result—the 'strike call,' if you will—a reviewing authority would be required, I would think, to accept an arbitrator's weighing of the two sworn statements." Hawkins, J. concurring, Pet. 32a.

labor arbitration law in this case that summary reversal would be warranted. We disagree, however, that it is desirable. A summary reversal simply citing the applicable decisions of this Court would do nothing to remedy the situation. What is necessary is that something be done to arrest the trend which we have identified. It is understandable that courts, accustomed as they are to being the final arbiter as to the meaning of contracts or the facts, should fail to recognize that in this area they must suppress their natural inclination to correct what they have believed to be wrongly decided. And so it may be necessary every ten years or so to remind the lower courts that in this area this is not their function. Oral argument, we do agree, is not necessary. But something, we submit, must be said by this Court if the system that has served management, labor and the nation so well is to be preserved. A per curiam opinion restating and emphasizing what this Court said in *Misco* about the standards governing labor arbitration will suffice.

2. In addition to underlining the error of the Ninth Circuit's first opinion in this case, the second opinion raises a second and important issue that warrants review. That issue is not encompassed within the question presented by the petitioner but it is an issue that this Court can and should raise *sue sponte*: jurisdiction. In its first opinion the Ninth Circuit held, correctly, that the district court's jurisdiction rested on Section 301 of the Labor Management Relations Act of 1947. When the district court remanded the case for a second arbitration hearing, however, there was a second jurisdictional question: whether the Court of Appeals had jurisdiction to hear an appeal from that order. The jurisdictional question was raised by the union on the appeal. Issue number one in its brief was stated to be "Whether this Court has jurisdiction over Garvey's appeal from the period of the district court order remanding this matter for further arbitration." An order remanding a vacated arbitration is not a final order under 28 U.S.C. §1291, the union argued. An

order directing arbitration under a collective agreement is a final order under § 1291, *Goodall Sanford, Inc. v. United Textile Workers*, 353 U.S. 550 (1957), but there is respectable authority for the proposition that, when an arbitration award is vacated, any remand to arbitration is not. As the Seventh Circuit held in *United Steelworkers of America v. Aurora Equipment Co.*, 830 F. 2d 753 (7th Cir. 1987) "We think it possible to distinguish between an order to arbitrate and a remand to the arbitrator." This is particularly true in this case because the direction to award damages to Garvey that Garvey sought (and ultimately obtained) would require calculation of the reduction in the amount of his claim (as well as other claimants' claims) that would be required because of the limited amount of the fund available. The Court of Appeals, however, avoided deciding the §1291 question by saying that it had jurisdiction on the second appeal under Section 16 (a)(3) of the Federal Arbitration Act. By resting jurisdiction on appeal on the FAA the Ninth Circuit thus presented squarely the question of whether the Federal Arbitration Act applies to arbitration under a collective bargaining agreement.

This is an important question which this Court has never definitively decided. It has been discussed at length in *Pryner v. Tractor Supply Co.*, 109 F.3d 354 (7th Cir. 1997) *cert. denied* 118 S. Ct. 295 (1997). This Court, in *Textile Workers Union v Lincoln Mills*, 353 U.S. 448 (1957), held that enforcement of the arbitration provision in a collective bargaining agreement could be based on Section 301. The Court simply ignored the FAA. It did not hold that it was inapplicable. In subsequent cases, particularly the *Steelworkers Trilogy* the Court relied on Section 301 in decisions regarding arbitrability and the enforcement of awards once made under a collective bargaining agreement, again ignoring the Federal Arbitration Act's provisions.

This Court did say in *Misco*, in a footnote unnecessary to the decision and without explanation or authority, that the FAA does not apply to "contracts of employment of . . . workers engaged in foreign or interstate commerce" [11] because of the exemption in Section 1. The scope of the commerce requirement in that section is before this Court in *Circuit City Stores, Inv. v. Adams*, No. 99-1379. How that question is decided will have no relevancy, however, if a collective bargaining agreement is not considered to be a "contract of employment." [12]

The time may now have come for the Court to eliminate the duality in the law governing labor and commercial arbitration agreements. Section 301 may still be necessary as a ground for district court jurisdiction. But once the jurisdictional question is settled, there may be little reason for continuing any difference between arbitration under Section 301 and arbitration under the Federal Arbitration Act with respect to questions of arbitrability and vacatur. The rule with respect to arbitrability is, as the law has developed, the same under Section 301 and the FAA. However, a difference has emerged with respect to the enforceability of awards under the two regimes, a difference to the detriment of labor arbitration deriving from language in *Enterprise* such as that seized upon here by the Ninth Circuit. The Academy has not taken a position with respect to the applicability of the FAA to labor management arbitration but sensible arguments have been made that the FAA, and in particular the provision limiting vacatur in Section 10(a), should be held to cover labor management arbitration.[13] We believe that the question is of

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[11] 484 U.S. 29, 41, n. 9 (1987).

[12] *See* Feller, *Putting Gilmer Where it Belongs: The FAA's Labor Exemption*, 18 Hofstra Labor & Employment Law Journal 253, 267 (2000).

[13] Id. at 276 ff.; Hayford, *The Federal Labor Arbitration Act: Key to Stabilizing and Strengthening the Law of Labor Arbitration*, 21 Berkeley

sufficient importance that the Court should take the step of granting certiorari and requesting the parties to brief and argue the question of whether the FAA applies to arbitration under a collective bargaining agreement.

Respectfully submitted,

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No. 00-1210

IN THE
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MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE OFFICE OF THE COMMISSIONER OF BASEBALL IN SUPPORT OF THE PETITION

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rule 37.2 of the Rules of this Court, the Office of the Commissioner of Baseball ("Office of the Commissioner") respectfully moves for leave to file the attached brief *amicus curiae* in support of the petition. Petitioner has consented to the filing of this brief. Respondent, however, has refused consent, thus necessitating the filing of this motion.

The Office of the Commissioner is responsible for the centralized administration of the game of professional baseball. It serves as the collective bargaining representative of the 30 Major League baseball clubs, which engage in multiemployer collective bargaining with professional

baseball players through their designated bargaining representative, the Major League Baseball Players Association ("MLBPA"). The Office of the Commissioner and MLBPA are parties to a collective bargaining agreement establishing terms and conditions of employment for professional baseball players. That collective bargaining agreement provides for arbitration before an impartial arbitrator of certain disputes concerning the interpretation or application of the agreement.

The collective bargaining process is a vital part of the labor-management relationship in baseball, and the bargaining parties have established arbitration as a fundamental part of that process. With respect to those matters which the Office of the Commissioner has contractually agreed to commit to the arbitration process, it is entitled to realize the benefit for which it has bargained. The arbitral forum has been selected by the Office of the Commissioner and the union representing professional baseball players as the venue for resolving many types of disputes touching upon terms and conditions of employment, including the dispute involved here. The court of appeals' decisions at issue in this case represent an improper intrusion upon the arbitral forum and, consequently, upon the parties' contract and their commitment to collective bargaining. For this reason, the Office of the Commissioner has a strong interest in the Court's consideration of the issues raised in this case.

Accordingly, the Office of the Commissioner respectfully requests that its motion for leave to file the accompanying brief as *amicus curiae* in support of the petition be granted.

Respectfully submitted,

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STATUTES

29 U.S.C. § 173(d) 4

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BRIEF *AMICUS CURIAE* OF THE OFFICE OF THE COMMISSIONER OF BASEBALL IN SUPPORT OF THE PETITION

INTEREST OF *AMICUS*

The interest of the *amicus curiae* is set forth in the motion accompanying this brief.[1]

[1] Pursuant to Supreme Court Rule 37.6, the Office of the Commissioner of Baseball states that no counsel for a party has written this brief in whole or in part and that no person or entity, other than *amicus* or its counsel, has made a monetary contribution to the preparation or submission of this brief. Petitioner has consented to the filing of this brief and the letter of consent has been filed with the Clerk of the Court. Respondent has not consented.

REASONS FOR GRANTING THE PETITION

The processes of collective bargaining, including grievance arbitration, are a fundamental part of the labor-management relationship in Major League Baseball. The Office of the Commissioner of Baseball ("Office of the Commissioner") supports the petition in this case because the court of appeals' decisions improperly intrude upon arbitration as the forum for resolving disputes under the collective bargaining agreement between the Office of the Commissioner and the Major League Baseball Players Association. The lower court's preemptive involvement in the arbitration process supplants the decisionmaker selected by the parties. The court of appeals' ultimate decision to assume the role of fact-finder and decisionmaker requires review by the Court.[2]

THE NINTH CIRCUIT'S DECISION COMMANDING THE ARBITRATOR TO ENTER A DIFFERENT AWARD CONFLICTS WITH GUIDANCE PROVIDED BY THIS COURT AND PRESENTS AN IMPORTANT ISSUE OF FEDERAL LABOR LAW THAT THIS COURT SHOULD RESOLVE.

By taking the unprecedented step of ordering the Arbitrator to change his award and enter one in favor of the claimant Steve Garvey, the Ninth Circuit improperly overstepped its judicial role. The appeals court's error in ordering the Arbitrator to substitute its determination on the merits in place of the Arbitrator's own award presents a significant

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[2] The Office of the Commissioner concurs with each of the petitioner's stated reasons for granting the petition. *Amicus* writes separately on the petitioner's second argument—the proposition that the Ninth Circuit compounded its initial error (that of substituting its own findings of fact for that of the Arbitrator) by thereafter determining the merits of the claim in arbitration and ordering the Arbitrator to enter a judgment in favor of the claimant Steve Garvey, rather than remanding the matter for further arbitral proceedings—in order to provide additional insight on this issue of substantial significance to federal labor policy.

question going to the role of arbitration in federal labor policy that warrants review by the Court.

In ordering the Arbitrator to change his award from one denying the claim to one accepting it *in toto* without any further arbitral consideration, the Ninth Circuit erred by inappropriately treating the arbitral forum as a venue subordinate to the judicial forum. The appeals court handled the arbitration award as it would a district court decision, substituting its own ruling in place of a lower court ruling with which it disagreed. That treatment, however, is antithetical to this Court's rulings according a special extrajudicial status to the arbitral forum. There are important labor policy reasons why the arbitral forum stands on a wholly separate footing from the judicial forum, and deference to that status must be accorded by federal courts.

This Court has provided extensive and clear guidance on the respective roles of labor arbitrators and the courts vis-à-vis the interpretation of labor contracts. First and foremost, when the labor arbitrator assumes the role assigned to him by contract and interprets a collective bargaining agreement, the resulting award must be treated as if it represents an *agreement* between an employer and union about the proper interpretation of their labor contract. *Eastern Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 121 S. Ct. 462, 467 (2000). In other words, "the [arbitrator's] award is not distinguishable from the contractual agreement." *Id.*

The courts have a narrowly-defined, albeit important, role in evaluating an award that has been fashioned by a labor arbitrator. First, the courts are charged with determining whether a labor arbitrator performed the job that was assigned to him by the contract. Thus, a court may set aside an arbitrator's ruling when the arbitrator acts outside the scope of his contractually-defined authority. *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Second, the courts are charged with determining

whether the arbitrator did his job, but in a manner that creates a conflict between the contract and positive law. Accordingly, in very narrowly-circumscribed circumstances, a court may refuse to enforce a labor arbitration award if that award—*i.e.*, the parties' *de facto* agreement—is contrary to positive law or well-defined public policy. *Eastern Associated Coal*, 121 S. Ct. at 467. Third, the courts may consider whether an arbitrator utterly failed to perform his interpretive function. Thus, a court may vacate an arbitrator's ruling when the arbitrator has not "even arguably" applied the contract or has "ignore[d] the plain language of the contract." *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987). Finally, courts may consider whether the arbitrator acted with improper motivations. For example, a federal court need not enforce an arbitral award that was procured through fraud or through the arbitrator's dishonesty. *Id.*

This strict division of labor between arbitral and judicial functions is grounded first in contract. It is the arbitrator's judgment, and all that it connotes, that was bargained for between the parties. *United Steelworkers of Am. v. American Mfg Co.*, 363 U.S. 564, 567-68 (1960). Simply put, the parties bargained for arbitral, not judicial, interpretation of their agreement. Perhaps just as important, the clear separation of powers between the arbitral and judicial fora is grounded in federal labor law and policy. Federal labor statutes "reflect a decided preference for private settlement of labor disputes without the intervention of government." *Misco*, 484 U.S. at 37. In fact, the Labor Management Relations Act of 1947, 61 Stat. 154, 29 U.S.C. § 173(d), expressly provides that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."

Given the law and policy underpinning the separation of powers between arbitrator and judge, this Court's precedent recognizes the importance of preserving the status of the arbitral forum by ensuring that the tasks assigned to that forum by contract are, in fact, performed there, and, as a corollary to that principle, by ensuring that federal courts do not treat themselves as superior entities with the right to substitute their own decision-making in areas reserved to the arbitrator. This Court regularly has cautioned lower courts about the impropriety of substituting their judgments for those of arbitrators, explaining that "[t]he federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *Enterprise Wheel*, 363 U.S. at 596. In fact, the only way to fully effectuate that important policy is to ensure that "the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given *full play*." *American Mfg. Co.*, 363 U.S. at 566 (emphasis added).

Courts do not have the authority to substitute their construction of a collective bargaining agreement for that of an arbitrator. "[T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for," *Enterprise Wheel*, 363 U.S. at 599 (*citing American Mfg Co.*, 363 U.S. 564), and a court acts improperly when "it usurps a function which . . . is entrusted to the arbitration tribunal." *American Mfg. Co.*, 363 U.S. at 569.

The limitation on the authority of federal courts with respect to arbitral awards means that courts cannot treat arbitral determinations as subordinate decisions and assume that the normal panoply of appellate rules and remedies apply. Given the bargaining parties' agreement to judgment by the arbitrator, courts, for example, "do not sit to hear claims of factual or legal error by an arbitrator as an appellate

court does in reviewing decisions of lower courts." *Misco*, 484 U.S. at 38. The courts do not have an appellate relationship with the arbitral forum and, thus, they may not handle arbitration awards as they would lower court decisions, substituting their own rulings in place of decisions with which they disagree.

Given the clear proscription on courts from arrogating to themselves the functions of labor arbitrators, this Court's precedent dictates that unresolved questions concerning a labor arbitrator's ruling—which, upon close examination, are what underpin the Ninth Circuit's decisions at issue here—must be returned to the arbitral forum for further consideration. A court cannot take over the arbitrator's interpretive role for itself. To permit a court to resolve for itself any questions (whether articulated or not) that it has about a labor arbitrator's decision is to deny the arbitration process its "full play"—a process that must be guaranteed in order to effectuate federal labor policy. *See, e.g., American Mfg. Co.*, 363 U.S. at 566.

This Court's order in *Enterprise Wheel* illustrates the proper procedural treatment to be afforded an arbitration award that leaves questions unsettled in the mind of the court because significant points or issues have not been fully considered or resolved by the arbitrator. In *Enterprise Wheel*, the Court considered a court of appeals' determination refusing to enforce an arbitrator's award ordering backpay and reinstatement to a discharged employee following the termination of a collective bargaining agreement. 363 U.S. at 595-96. This Court affirmed only one aspect of the appeals court's judgment—its conclusion that an ambiguity in the arbitrator's award as to appropriate backpay amounts should be *returned to the arbitral forum for determination by arbitration*. *Id.* at 599. While affirming the remand to the arbitrator, the Court reversed all aspects of the court of appeals' judgment that had involved the lower court's

substitution of its interpretation of the contract for that of the arbitrator. *Id.*

The Court's decision in *Misco* is even more direct on this point, clearly demonstrating that remand to the arbitral forum is appropriate when a court has overriding concerns about whether an arbitrator addressed or resolved issues that are crucial to the interpretation of the contract.[3] The *Misco* decision provides unambiguous guidance to courts about the impropriety of treating the arbitral forum as a subordinate venue, as well as the propriety of remanding issues for further arbitral proceedings:

> [A]s a rule the court must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since this step would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for in the collective-bargaining agreement. Instead, the court should simply vacate the award, thus leaving open the possibility of further proceedings if they are permitted under the terms of the agreement. The court also has the authority to remand for further proceedings when this step seems appropriate.

484 U.S. at 40-41 n.10. (citation omitted).

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[3] This Court's teachings make it clear, however, that "[a] mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award." *Enterprise Wheel*, 363 U.S. at 598. Given that mandate, lower courts have suggested that remand for further elucidation by an arbitrator is only appropriate (and, otherwise, awards should be enforced) when an arbitration award is so ambiguous or vague as to render it incapable of enforcement. *See, e.g., Aeronautical Machinists Lodge 709, IAM v. Lockheed-Georgia Co.*, 683 F.2d 419, 1982 U.S. App. Lexis 17283, at *14 (11th Cir. 1982), *cert. denied*, 459 U.S. 1205 (1983).

While acknowledging this Court's guidance, the Ninth Circuit rationalized its refusal to remand decision-making to the Arbitrator here by concluding that *Misco* was limited only to situations involving an alleged procedural error by the arbitrator. Pet. 3a n.4. This Court's guidance in *Misco* concerning remand, however, cannot be read so narrowly. While the quoted *Misco* language concededly appears at a point in the case at which the Court was addressing an allegation that the arbitrator had erred in a procedural ruling excluding from consideration certain after-discovered evidence, the Court's discussion of the appropriateness of remand is not expressly limited to alleged arbitral procedural errors. Rather, the *Misco* decision, like the *Enterprise Wheel* case before it, recognizes that remand to the arbitrator is the proper course for addressing a host of potential questions or concerns about an arbitrator's ruling. For example, after observing in *Misco* that the underlying arbitration decision was "cryptic[]" in its analysis of one contract provision, 484 U.S. at 41, the Court held that the appeals court erred in entering a decision based on its own interpretation of the contract, concluding instead that "the proper course would have been remand to the arbitrator for a definitive construction of the contract in this respect." *Id.* at 42. Thus, *Misco* supports the proposition that remand to the arbitral forum is the appropriate course of action when a court has serious questions about whether an arbitrator addressed or resolved issues that are crucial to the interpretation of the contract.

Applying these principles to this case, it is evident that the Ninth Circuit erred in doing precisely what this Court's precedent makes clear is impermissible—usurping the role of the Arbitrator with respect to tasks squarely entrusted to his authority and treating the arbitral forum as a subordinate decision-making venue subject to full appellate review. Looking beneath their surface, the Ninth Circuit's decisions amount to that court's own resolution of a series of implicit questions that the court perceived to be unaddressed in, or

unanswered by, the Arbitrator's decision. These implicit questions answered by the court below included, for example:

> —In ruling that there was a "shadow cast over the credibility of the [Ballard] Smith testimony," Pet. 51a, did the Arbitrator reject any and all of Ballard Smith's testimony (from either 1986 or 1996) as being unworthy of credit, or did the Arbitrator in fact rely in part upon the 1986 collusion arbitration testimony of Ballard Smith?
>
> —If the Arbitrator did actually rely upon some or all of Ballard Smith's 1986 testimony (rather than rejecting as unreliable any Smith testimony from any time period), what factors led him to do so, in light of the fact that the Arbitrator had concluded in an earlier arbitration that the Club owners had colluded to depress player salaries and, in so holding, had rejected 1986 testimony of owners (including Ballard Smith) that no collusion had occurred?
>
> —If the Arbitrator did not credit Ballard Smith's 1986 testimony specific to Garvey (in light of the arbitrator's prior determination that the owners' testimony concerning the absence of collusion should not be credited), why did he not then credit those portions of Smith's 1996 testimony which reversed the earlier 1986 testimony, and, further, why did the Arbitrator not accept the 1996 testimony as definitively establishing the merit of Garvey's claims?
>
> —In finding "the absence of any other corroboration of the claim submitted by Garvey [other than the uncredited 1996 Ballard Smith testimony]," Pet. 51a, did the Arbitrator rely on the fact that the claimant Garvey himself had submitted materials (in the form of Claims Questionnaires) to the MLBPA that were contrary to his

position that he had received an express offer from the Padres in 1985? [4]

—If the Arbitrator did rely on Garvey's own assertions in his Claims Questionnaires in concluding that his claims were not corroborated by the evidence, did the Arbitrator alter his own procedural rule that he would not treat as definitive "conflicting claims" that Players had advanced earlier in the claims procedure [5], or was that rule limited to inconsistent positions taken by Players on such matters as eligibility for, or amounts of, claims, rather than inconsistencies in factual allegations?

Faced with such unanswered questions, the court of appeals should not have overstepped its authority and taken on the responsibility vested solely in the Arbitrator. Instead, if the Ninth Circuit had serious concerns about possible missteps or gaps in the Arbitrator's decision-making process,

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[4] The Ninth Circuit stated in its original February 10, 2000 decision that "the record contains no indication that the arbitrator relied on the questionnaires." Pet. 23a n.6. However, the Arbitrator's July 16, 1999 award covering 1989 lost salary claims expressly questions "[t]he credibility of the Garvey testimony" and refers to "the original statement of the Garvey claim, along with the accompanying collusion claims questionnaire." Pet. 43a. As the court of appeals explained in its original decision, Garvey never alleged that he had received a specific offer from the Padres until the arbitration hearing on his claim—which took place after the MLBPA issued its Partial Distribution Plan formulated, in part, on information gleaned from Players' Claims Questionnaires. Pet. 14a. Garvey submitted questionnaires in 1988 and 1991 which never asserted he had received an extension offer. Pet. 15a. In fact, Garvey stated in his questionnaire responses that it "would have been reasonable" for the Padres to pursue an extension, *id.*—strongly inferring that the Club did not. Further, his responses described negotiations in 1986 in which the Padres expressed interest in retaining Garvey beyond 1987 but nonetheless declined to talk about an extension until a later date. *Id.*

[5] This rule is described and quoted in the Ninth Circuit's original decision without record citation. Pet. 23a n.6.

then the only proper course of action it had before it was remand to the arbitral forum—a course that this Court frequently has noted as appropriate in comparable circumstances. What the court of appeals could not permissibly do was substitute its own judgment for that of the Arbitrator. By granting the petition and reversing the Ninth Circuit, this Court will ensure that the appropriate deference is granted to the arbitral forum under federal labor law and policy.

CONCLUSION

For the reasons stated in the petition and in this *amicus* brief, this Court should grant the petition.

Respectfully submitted,

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RESPONDENT'S OPPOSITION TO THE NATIONAL ACADEMY OF ARBITRATORS' MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

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March 9, 2001

3 pp

Pursuant to Supreme Court Rule 37.5, Respondent Steve Garvey respectfully objects to the motion of the National Academy of Arbitrators ("NAA") for leave to file an *amicus curiae* brief in support of the Petitioner, Major League Baseball Players Association.

Respondent withheld his consent to the filing of NAA's *amicus* brief because Respondent believed that the brief would (i) only be a restatement and re-argument of the same issues and positions already thoroughly addressed by the Petitioner; (ii) fail to bring to the Court's attention any relevant matter not already brought to the Court's attention by the parties involved; and, (iii) be a disfavored burden to this Court pursuant to Rule 37.

A simple reading of the NAA's submitted *amicus* brief supports the reasons for Respondent withholding his consent and confirms that the brief is simply a restatement by an outside party of the same issues and arguments already put forth by the Petitioner. The NAA also acknowledges that "this Court does not sit just to correct errors." and that "this case has some unique characteristics . . . ." Indeed, the uniqueness of this case supports Respondent's contention that the Ninth Circuit's December 2000 decision is of little import beyond the parties involved and as such does not rise to a level to warrant certiorari.

Supreme Court Rule 37.1 specifically states that this Court does not need another restatement of the Petitioner's arguments on issues already addressed thoroughly by the parties involved. An outside party's restatement of one party's

position is only a disfavored burden to this Court and therefore should not be considered.

Respondent respectfully requests that this Court deny NAA's motion for leave to file an *amicus curiae* brief pursuant to Rule 37.

Respectfully submitted,

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March 9, 2001

Supreme Court, U.S.
FILED
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(1)

No. 00-1210

IN THE
Supreme Court of the United States

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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RESPONDENT'S OPPOSITION TO THE NATIONAL ACADEMY OF ARBITRATORS' MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

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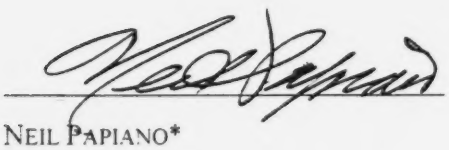

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SUPREME COURT OF THE UNITED STATES

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION *v.* STEVE GARVEY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 00–1210. Decided May 14, 2001

PER CURIAM.

The Court of Appeals for the Ninth Circuit here rejected an arbitrator's factual findings and then resolved the merits of the parties' dispute instead of remanding the case for further arbitration proceedings. Because the Court's determination conflicts with our cases limiting review of an arbitrator's award entered pursuant to an agreement between an employer and a labor organization and prescribing the appropriate remedy where vacation of the award is warranted, we grant the petition for a writ of certiorari and reverse. The motions for leave to file briefs *amicus curiae* of the National Academy of Arbitrators and the Office of the Commissioner of Baseball are granted.

In the late 1980's, petitioner Major League Baseball Players Association (Association) filed grievances against the Major League Baseball Clubs (Clubs), claiming the Clubs had colluded in the market for free-agent services after the 1985, 1986 and 1987 baseball seasons, in violation of the industry's collective-bargaining agreement. A free agent is a player who may contract with any Club, rather than one whose right to contract is restricted to a particular Club. In a series of decisions, arbitrators found collusion by the Clubs and damage to the players. The Association and Clubs subsequently entered into a Global Settlement Agreement (Agreement), pursuant to which the Clubs established a $280 million fund to be distributed to injured players. The Association also designed a "Framework" to evaluate the individual player's claims,

and, applying that Framework, recommended distribution plans for claims relating to a particular season or seasons.

The Framework provided that players could seek an arbitrator's review of the distribution plan. The arbitrator would determine "only whether the approved Framework and the criteria set forth therein have been properly applied in the proposed Distribution Plan." *Garvey* v. *Roberts*, 203 F. 3d 580, 583 (CA9 2000) *(Garvey I)*. The Framework set forth factors to be considered in evaluating players' claims, as well as specific requirements for lost contract-extension claims. Such claims were cognizable "'only in those cases where evidence exists that a specific offer of an extension was made by a club prior to collusion only to thereafter be withdrawn when the collusion scheme was initiated.'" *Id.*, at 584.

Respondent Steve Garvey, a retired, highly regarded first baseman, submitted a claim for damages of approximately $3 million. He alleged that his contract with the San Diego Padres was not extended to the 1988 and 1989 seasons due to collusion. The Association rejected Garvey's claim in February 1996, because he presented no evidence that the Padres actually offered to extend his contract. Garvey objected, and an arbitration hearing was held. He testified that the Padres offered to extend his contract for the 1988 and 1989 seasons and then withdrew the offer after they began colluding with other teams. He presented a June 1996 letter from Ballard Smith, Padres' President and CEO from 1979 to 1987, stating that, before the end of the 1985 season, Smith offered to extend Garvey's contract through the 1989 season, but that the Padres refused to negotiate with Garvey thereafter due to collusion.

The arbitrator denied Garvey's claim, after seeking additional documentation from the parties. In his award, he explained that "'[t]here exists . . . substantial doubt as to the credibility of the statements in the Smith letter.'"

Id., at 586. He noted the "stark contradictions" between the 1996 letter and Smith's testimony in the earlier arbitration proceedings regarding collusion, where Smith, like other owners, denied collusion and stated that the Padres simply were not interested in extending Garvey's contract. *Ibid.* The arbitrator determined that, due to these contradictions, he "'must reject [Smith's] more recent assertion that Garvey did not receive [a contract] extension'" due to collusion, and found that Garvey had not shown a specific offer of extension. *Ibid.* He concluded that:

> "'[t]he shadow cast over the credibility of the Smith testimony coupled with the absence of any other corroboration of the claim submitted by Garvey compels a finding that the Padres declined to extend his contract not because of the constraints of the collusion effort of the clubs but rather as a baseball judgment founded upon [Garvey's] age and recent injury history.'" *Ibid.*

Garvey moved in Federal District Court to vacate the arbitrator's award, alleging that the arbitrator violated the Framework by denying his claim. The District Court denied the motion. The Court of Appeals for the Ninth Circuit reversed by a divided vote. The court acknowledged that judicial review of an arbitrator's decision in a labor dispute is extremely limited. But it held that review of the merits of the arbitrator's award was warranted in this case, because the arbitrator "'dispensed his own brand of industrial justice.'" *Id.*, at 589. The court recognized that Smith's prior testimony with respect to collusion conflicted with the statements in his 1996 letter. But in the court's view, the arbitrator's refusal to credit Smith's letter was "inexplicable" and "border[ed] on the irrational," because a panel of arbitrators, chaired by the arbitrator involved here, had previously concluded that the owners' prior testimony was false. *Id.*, at 590. The court rejected the arbitrator's reliance on the absence of other corroborating evidence, attributing that fact to Smith and Garvey's direct

negotiations. The court also found that the record provided "strong support" for the truthfulness of Smith's 1996 letter. *Id.*, at 591–592. The Court of Appeals reversed and remanded with directions to vacate the award.

The District Court then remanded the case to the arbitration panel for further hearings, and Garvey appealed. The Court of Appeals, again by a divided vote, explained that *Garvey I* established that "the conclusion that Smith made Garvey an offer and subsequently withdrew it because of the collusion scheme was the only conclusion that the arbitrator could draw from the record in the proceedings." No. 00–56080, 2000 WL 1801383, at *1 (Dec. 7, 2000), judgt. order to be reported at 243 F. 3d 547. *(Garvey II).* Noting that its prior instructions might have been unclear, the Court clarified that *Garvey I* "left only one possible result—the result our holding contemplated—an award in Garvey's favor." *Ibid.* The Court of Appeals reversed the District Court and directed that it remand the case to the arbitration panel with instructions to enter an award for Garvey in the amount he claimed.[1]

The parties do not dispute that this case arises under §301 of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. §185(a), as the controversy involves an assertion of rights under an agreement between an employer and a labor organization. Although Garvey's specific allegation is that the arbitrator violated the

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[1]Garvey contends that, because the Association's petition was filed more than 90 days after *Garvey I*, we cannot consider a challenge raising issues resolved in that decision. But there is no question that the Association's petition was filed in sufficient time for us to review *Garvey II*, and we have authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals. *Mercer* v. *Theriot*, 377 U. S. 152 (1964) *(per curiam)*; *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U. S. 251, 258 (1916).

Framework for resolving players' claims for damages, that Framework was designed to facilitate payments to remedy the Clubs' breach of the collective-bargaining agreement. Garvey's right to be made whole is founded on that agreement.

Judicial review of a labor-arbitration decision pursuant to such an agreement is very limited. Courts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement. *Paperworkers* v. *Misco, Inc.*, 484 U. S. 29, 36 (1987). We recently reiterated that if an "'arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,' the fact that 'a court is convinced he committed serious error does not suffice to overturn his decision.'" *Eastern Associated Coal Corp.* v. *Mine Workers*, 531 U. S. 57, 62 (2000) (quoting *Misco*, *supra*, at 38). It is only when the arbitrator strays from interpretation and application of the agreement and effectively "dispense[s] his own brand of industrial justice" that his decision may be unenforceable. *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593, 597 (1960). When an arbitrator resolves disputes regarding the application of a contract, and no dishonesty is alleged, the arbitrator's "improvident, even silly, factfinding" does not provide a basis for a reviewing court to refuse to enforce the award. *Misco*, 484 U. S., at 39.

In discussing the courts' limited role in reviewing the merits of arbitration awards, we have stated that "'courts . . . have no business weighing the merits of the grievance [or] considering whether there is equity in a particular claim.'" *Id.*, at 37 (quoting *Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564, 568 (1960)). When the judiciary does so, "it usurps a function which . . . is entrusted to the arbitration tribunal." *Id.*, at 569; see also *Enterprise Wheel & Car Corp.*, *supra*, at 599 ("It is the arbitrator's construction [of

the agreement] which was bargained for . . . "). Consistent with this limited role, we said in *Misco* that "[e]ven in the very rare instances when an arbitrator's procedural aberrations rise to the level of affirmative misconduct, as a rule the court must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result." 484 U. S. at 40–41, n. 10. That step, we explained, "would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for" in their agreement. *Ibid.* Instead, the court should "simply vacate the award, thus leaving open the possibility of further proceedings if they are permitted under the terms of the agreement." *Ibid.*

To be sure, the Court of Appeals here recited these principles, but its application of them is nothing short of baffling. The substance of the Court's discussion reveals that it overturned the arbitrator's decision because it disagreed with the arbitrator's factual findings, particularly those with respect to credibility. The Court of Appeals, it appears, would have credited Smith's 1996 letter, and found the arbitrator's refusal to do so at worst "irrational" and at best "bizarre." *Garvey I*, 203 F. 3d, at 590–591. But even "serious error" on the arbitrator's part does not justify overturning his decision, where, as here, he is construing a contract and acting within the scope of his authority. *Misco*, *supra*, at 38.

In *Garvey II*, the court clarified that *Garvey I* both rejected the arbitrator's findings and went further, resolving the merits of the parties' dispute based on the court's assessment of the record before the arbitrator. For that reason, the court found further arbitration proceedings inappropriate. But again, established law ordinarily precludes a court from resolving the merits of the parties' dispute on the basis of its own factual determinations, no matter how erroneous the arbitrator's decision. *Misco*, *supra*, at 40, n. 10; see also *American Mfg. Co.*, 363 U. S.

at 568. Even when the arbitrator's award may properly be vacated, the appropriate remedy is to remand the case for further arbitration proceedings. *Misco*, *supra*, at 40, n. 10. The dissent suggests that the remedy described in *Misco* is limited to cases where the arbitrator's errors are procedural. *Post*, at 1 (opinion of STEVENS, J.) *Misco* did involve procedural issues, but our discussion regarding the appropriate remedy was not so limited. If a remand is appropriate *even* when the arbitrator's award has been set aside for "procedural aberrations" that constitute "affirmative misconduct," it follows that a remand ordinarily will be appropriate when the arbitrator simply made factual findings that the reviewing court perceives as "irrational." The Court of Appeals usurped the arbitrator's role by resolving the dispute and barring further proceedings, a result at odds with this governing law.[2]

For the foregoing reasons, the Court of Appeals erred in reversing the order of the District Court denying the motion to vacate the arbitrator's award, and it erred further in directing that judgment be entered in Garvey's favor. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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[2]In any event, no serious error on the arbitrator's part is apparent in this case. The fact that an earlier panel of arbitrators rejected the owners' testimony as a whole does not compel the conclusion that the panel found Smith's specific statements with respect to Garvey to be false. The arbitrator's explanation for his decision indicates that he simply found Smith an unreliable witness and that, in the absence of corroborating evidence, he could only conclude that Garvey failed to show that the Padres had offered to extend his contract. The arbitrator's analysis may have been unpersuasive to the Court of Appeals, but his decision hardly qualifies as serious error, let alone irrational or inexplicable error. And, as we have said, any such error would not justify the actions taken by the court.

SUPREME COURT OF THE UNITED STATES

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION v. STEVE GARVEY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 00–1210. Decided May 14, 2001

JUSTICE GINSBURG, concurring in part and concurring in the judgment.

I agree with the Court that in *Garvey* v. *Roberts*, 203 F. 3d 580 (CA9 2000) (*Garvey I*), the Ninth Circuit should not have disturbed the arbitrator's award. Correction of that error sets this case straight. I see no need to say more.

SUPREME COURT OF THE UNITED STATES

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION *v.* STEVE GARVEY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 00–1210. Decided May 14, 2001

JUSTICE STEVENS, dissenting.

It is well settled that an arbitrator "does not sit to dispense his own brand of industrial justice." *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593, 597 (1960). We have also said fairly definitively, albeit in dicta, that a court should remedy an arbitrator's "procedural aberrations" by vacating the award and remanding for further proceedings. *Paperworkers* v. *Misco, Inc.*, 484 U. S. 29, 40–41, n. 10 (1987). Our cases, however, do not provide significant guidance as to what standards a federal court should use in assessing whether an arbitrator's behavior is so untethered to either the agreement of the parties or the factual record so as to constitute an attempt to "dispense his own brand of industrial justice." Nor, more importantly, do they tell us how, having made such a finding, courts should deal with "the extraordinary circumstance in which the arbitrator's own rulings make clear that, more than being simply erroneous, his finding is completely inexplicable and borders on the irrational." *Garvey* v. *Roberts*, 203 F. 3d 580, 590 (CA9 2000) (case below). Because our caselaw is not sufficiently clear to allow me to conclude that the case below was wrongly decided—let alone to conclude that the decision was so wrong as to require the extraordinary remedy of a summary reversal—I dissent from the Court's disposition of this petition.

Without the benefit of briefing or argument, today the Court resolves two difficult questions. First, it decides that even if the Court of Appeals' appraisal of the merits is

correct—that is to say, even if the arbitrator did dispense his own brand of justice untethered to the agreement of the parties, and even if the correct disposition of the matter is perfectly clear—the only course open to a reviewing court is to remand the matter for another arbitration. That conclusion is not compelled by any of our cases, nor by any analysis offered by the Court. As the issue is subject to serious arguments on both sides, the Court should have set this case for argument if it wanted to answer this remedial question.

Second, without reviewing the record or soliciting briefing, the Court concludes that, in any event, "no serious error on the arbitrator's part is apparent in this case." *Ante*, at 7, n. 3. At this stage in the proceedings, I simply cannot endorse that conclusion. After examining the record, obtaining briefing, and hearing oral argument, the Court of Appeals offered a reasoned explanation of its conclusion. See 203 F. 3d, at 589–592; see also *id.*, at 593–594 (Hawkins, J., concurring). Whether or not I would ultimately agree with the Ninth Circuit's analysis, I find the Court's willingness to reverse a factbound determination of the Court of Appeals without engaging that court's reasoning a troubling departure from our normal practice.[1]

Accordingly, I respectfully dissent.

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[1]The Court's opinion is somewhat ambiguous as to its reasons for overturning the portion of the Court of Appeals' decision setting aside the arbitration. It is unclear whether the majority is saying that a court may never set aside an arbitration because of a factual error, no matter how perverse, or whether the Court merely holds that the error in this case was not sufficiently severe to allow a court to take that step. If it is the latter, the Court offers no explanation of what standards it is using or of its reasons for reaching that conclusion.